2195.

SUPREME COURT OF THE UNITED STATES.

No. 96.

SAMUEL LEE AND BARBARA LFE, PLAINTIFFS IN ERROR,

VERSUS

ELIZABETH LEE.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE COUNTY OF WASHINGTON, DISTRICT COLUMBIA.

INDEX.

	Original.	Print.
Petition for freedom	1	2
Subpœna	2	2
Return of subpœna	2	2
Appearance of defendant	2	2
Appearance of parties, plea, issue	3	2
Depositions by defendant	3	3
Jury empannelled, verdict for defendant, judgment on verdict	6	4
Bill of exceptions	6	4
Appeal bond	10	6
Writ of error	11	7
Citation and service	13	7

DISTRICT OF COLUMBIA, *to wit*:

Style of court. At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington on the first Monday of May, being the seventh day of the same month, in the year of our Lord one thousand eight hundred and thirty-two, and of the independence of the United States the fifty-sixth.

Present: The honorable William Cranch, Chief Judge; Buckner Thruston and James S. Morsell, Assistant Judges; Henry Ashton, esquire, Marshall.

WILLIAM BRENT, *Clerk.*

In the record of proceedings of the same court, among others, are the following, to wit:

Parties. SAMUEL LEE AND BARBARA LEE, *vs.* ELIZABETH LEE.

Be it remembered that, heretofore, to wit, on the twentieth day of May, in the year of our Lord one thousand eight hundred and thirty-one, the said Samuel Lee and Barbara Lee, by Richard S. Coxe and Benjamin P. Smith, esquires, their attorneys, filed in court here the following petition, viz.

"To the honorable the judges of the circuit court of the Disctrict of Columbia, for the county of Washington.

Petition. The several petitions of Samuel Lee and Barbara Lee humbly showeth to your honors, that they are persons of color, who are entitled to their freedom, and are now held in a state of slavery by Mrs. Elizabeth Lee of the city of Washington, contrary to law, and to the just right of your petitioners. Wherefore, they pray process, &c., and such relief in the premises as to your honors may seem mete.

COXE & SMITH,
for Petitioners."

Whereupon, the following subpœna was issued:

Subpœna. DISTRICT OF COLUMBIA, *to wit:—The United States of America to the Marshal of the District of Columbia, greeting:*

You are hereby commanded to summon Elizabeth Lee, if she shall be found within the county of Washington, that (all excuses set aside,) she be and appear before the circuit court of the District of Columbia to be held for the county of Washington, in the city of Washington, on the first Monday of December next, to answer the petition for freedom of Samuel Lee and Barbara Lee, filed in said court against her.

Hereof fail not at your peril, and have you then and there this precipe.

Witness, William Cranch, esquire, Chief Judge of the said court.

Issued the 20th day of May, 1831.

WILLIAM BRENT, *Clk.*

COXE & SMITH.

At which said first Monday of December, in the year of our Lord one thousand eight hundred and thirty-one, being the day of the return of the writ of subpœna aforesaid, came into the circuit court here the petitioners aforesaid,

Return of subpœna. by their attorneys aforesaid; and the marshal of the district aforesaid, to whom the said subpœna was directed, makes return thereof to the court here thus endorsed to wit, "summoned

Appearance of defendant. H. Ashton, marshal," and the said Elibabeth Lee, by Walter Jones, esquire, her attorney, comes and defends the complaint aforesaid, when and where the said court shall take the same into consideration, but prays leave to imparle until the first Monday of May next, and she has it—the same day is given to the said petitioners then and there, &c.

May term, 1832. At which said first Monday of May, in the year of our Lord one thousand eight hundred and thirty-two, come again into the circuit court here as well the petitioners aforesaid, by

Appearance of parties. their attorneys aforesaid, as the said Elizabeth Lee, by her attorney aforesaid; and the said Elizabeth Lee, by her attorney aforesaid, as before, defends the complaint aforesaid, when and where the said court shall take the same into consideration, and, for plea, she

says that the said petitioners are not entitled to their freedom, as they have alleged; and of this she puts herself upon her country, and the said petitioners in like manner, &c. Plea. Issue.

And the said Elizabeth Lee, by her attorney aforesaid, filed in court here the following depositions, to wit: Depositions by defendant.

Interrogatories to Miss Muir.

1. Do you recollect hiring from Mrs. Lee, some years ago, a negro girl named Barbara?

2. Please state the terms on which she was hired, and how long she remained in your family.

Cross-interrogatories.

1. When did you first know Barbara? Where did she come from? Where did she reside before coming to Alexandria? How long do you know that she lived in Alexandria, (city or county,) and where did she go after leaving there?

To Miss Davis.

Were you living with General Jones, at his farm in Alexandria county, some years ago?

Do you recollect his hiring from Mrs. Lee, a servant boy named Sam?

Please state how long he remained with General Jones.

Cross-interrogatory.

Where did Sam come from, and where had he lived before he was brought to Alexandria (city or county?) How long did he live in Alexandria city or county, and where did he go to from thence?

Miss Jane Muir's answers to the interrogatories.

1st. Yes, my mother hired this girl in the fall or spring of the year 1820, I think.

2d. I do not recollect the terms on which she was hired. I think she remained about twelve months in our family, to the best of my recollection.

Answers to cross-interrogatories.

1st. I did not know Barbara before she was hired to us. 2d. I think she came from Mrs. Lee's farm in Virginia. 3d. I do not know where she resided before; she remained with us about twelve months, and, when she left us, went to Washington.

JANE MUIR.

I can state the same in answer to the above interrogatories.

ELIZABETH MUIR.

March 8, 1832.

DISTRICT OF COLUMBIA,
COUNTY OF ALEXANDRIA, } *sct.*

This day, Jane and Elizabeth Muir personally appeared before me, a justice of the peace in and for the said county, and made oath that the answers they have given to the within interrogatories are true, to the best of their knowledge and belief.

Given under my hand and seal, this 8th day of March, 1832.

ADAM LYNN. [SEAL.]

Mrs. Davis answers to the interrogatories.

1st. I was living with General Jones at his farm in Alexandria county about nine or ten years ago.

2d. I recollect that General Jones hired, about that time, two negro boys from Mr. Lee, named Frederick and Samuel, and, to the best of my knowledge, Frederick ran off soon after coming to General Jones; but Samuel remained there several months, I belive about six months. I recollect they came early in the spring, and Samuel left the latter part of the summer.

Answers to the cross-interrogatories.

He came, I believe, from Mr. Lee's farm in Virginia. I do not know where he lived before he was brought to General Jones. He lived, as I have stated, about six months, to the best of my recollection, with General Jones, at his farm in Alexandria county, and went afterwards to Mrs. Lee's, in Washington.

MARY DAVIS.

March 8, 1832.

DISTRICT OF COLUMBIA, } *ss.*
COUNTY OF ALEXANDRIA, }

Personally appeared before me, a justice of the peace of and for the county aforesaid, Mary Davis, and made oath that the answers to the annexed interrogatories are true to the best of her knowledge and belief.

Given under my hand, this 7th day of March, 1832.

JACOB MORGAN.

And whereupon, for trying the issue aforesaid, between the parties aforesaid within joined, to be tried by the country, it is ordered, by the court here, that a jury thereon appear before the court here immediately, by whom, &c. who neither, &c. to recognize, &c because as well, &c.; and thereupon, twelve persons from the pannel of petit jurors, returned to the court here, by the marshal of the district aforesaid, being called, come, to wit:

Venire ordered

Henry Holmead, William Magee, James Owens, Nathaniel A. Hinkle, Newton Berryman, Richard Harrison, Thomas Orme, Peter Griffin, Reuben W. Horner, Samuel Kirby, Alfred R. Dowson, George D. Spencer, who, being empannelled and sworn to say the truth in the premises, upon their oath do say that the said petitioners are not entitled to their freedom as the said defendant above, in pleading, hath alleged.

Jurors' names.

Jury empannelled.

Verdict for defendant.

Wherefore, it is considered by the court here that the said petitioners take nothing by their petition aforesaid, and that the said defendant, Elizabeth Lee, go thereof without day, &c.

Judgment on verdict

Memorandum.—Before the jurors aforesaid withdrew from the bar of the court here, the said Samuel and Barbara Lee, by their attorneys aforesaid, filed in court here the following bill of exceptions, viz.

Bill of exceptions by petitioners.

"The petitioners, in order to support the issue joined on their part, proved by competent witnesses that the petitioners were born in the State of Virginia as slaves of Richard B. Lee, esquire, deceased; that the said R. B. Lee moved with his

family to the county of Washington, D. C., in or about the year 1816; and these petitioners continued to reside in Virginia as his slaves. In 1820, the said petitioner, Barbara, was removed to Alexandria county, where she was hired to Mrs. Muir, and continued with her thus hired for the period of a year. That said petitioner, Sam, was in like manner removed to Alexandria county, and was hired to General Walter Jones for a period of about five or six months. That, after the expiration of said periods of hiring, said petitioners were removed to the county of Washington, where they continued to reside as the slaves of said R. B. Lee until his death, and since as the slaves of his widow, the defendant.

And no other evidence being produced or offered, the petitioners' counsel prayed the court to give to the jury the following instructions:

1st. If the jury shall believe, from the evidence aforesaid, that the said petitioners, or either of them, were slaves born in Virginia, and that Mr. Lee, their master, removed from Virginia, in 1817, with his family, to the county of Washington, and left said petitioners reisiding in Virginia, and, subsequently to the year 1820, said petitioners, or either of them, were removed from Virginia directly to the county of Washington, the petitioner or petitioners thus removed are entitled to their freedom in the present suit.

2d. And if the jury shall believe from the said evidence, that the said petitioners, or either of them, were originally brought by their master, an inhabitant and citizen of Washington county, in this District, from Virginia to Alexandria county, and thence to Washington county, they are also entitled to their, his, or her freedom, unless the jury shall also believe, from the evidence aforesaid, that the residence in Alexandria county was not merely transitory, but was bona fide and permament.

Whereupon, the defendants' counsel, waiving all objection to the first of said instructions (which the court gave as prayed,) objected to the second, and prayed the court, in lieu thereof, to give the following instruction (No. 3,) to the jury, which the court accordingly gave, and refused the said second instruction, as prayed by petitioners' counsel.

3d. That if the petitioners were bona fide hired to persons residing in Alexandria, and served their regular terms of hire there, the petitioner, Barbara, for a year or more; the petitioner, Sam, from three to six months; and, upon the expiration of their respective terms of hire, were brought from Alexandria to Washington, such hiring and residence in Alexandria constituted a residence sufficiently permanent to authorize such removal; that such removal from Alexandria to Washington, upon the expiration of such terms of hire, does not infer such preconceived intent to bring them from Virginia to Washington, as to render their intermediate residence in Alexandria merely transitory and *mala fide*, and their subsequent removal thence to Washington equivalent to a removal direct from Virginia to Washington.

Whereupon, the petitioners' counsel prayed the court to instruct the jury as follows:

4th. But if the jury shall believe from the evidence aforesaid that the bringing of the petitioners from Virginia to Alexandria by their owner, and hiring them there, was merely colorable with intent to evade the law, that then the petitioners are entitled to their freedom.

But the court refused to give said instruction as prayed, being of opinion there was no evidence in the case tending to prove that the bringing of the petitioners from Virginia to Alexandria, and hiring them there, was merely colorable, and with intent to evade the law.

Whereupon, the petitioners' counsel further prayed the court to instruct the jury as follows:

5th. But if the jury shall believe, from the evidence aforesaid, that the bringing of the said petitioners, or either of them, from Virginia to Alexandria, and hiring them there, was with intent, on the part of the owner, merely to evade the law which prohibited their immediate removal from Virginia to the county of Washington, and that said slaves never did bona fide reside in Alexandria, and never lost, by their temporary residence in Alexandria, their character as Virginia slaves, the petitioners are entitled to recover.

Which instruction the court also refused, being of opinion there was no evidence in the case of any intent to evade the law, or of the residence of the petitioners in Alexandria being mala fide.

To which several refusals of the court to give to the jury the instructions, so as aforesaid prayed by the counsel of the petitioners, they except, and this their bill of exceptions is signed, sealed, and ordered to be enrolled, this 31st of May, 1832.

WILLIAM CRANCH. [SEAL.]
JAMES S. MORSELL. [SEAL.]

Test: WILLIAM BRENT, *Clk.*

And whereas, afterwards, to wit, on the ninth day of November, in the year 1833, the said Barbara Lee and Samuel Lee, by their attorney aforesaid, produced and filed in court here the United States' writ for correcting of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereunto annexed, is hereby transmitted to the said supreme court accordingly.

In testimony whereof, I have hereunto subscribed my name, and affixed the public seal of said circuit court for the county aforesaid, this ninth day of November, 1833.

WILLIAM BRENT, *Clk.*

(*Copy Appeal Bond.*)

Know all men by these presents, that we, Samuel Lee and Ignatius Digges, are held and firmly bound unto Elizabeth Lee in the full and just sum two hundred dollars current money, to be paid to the said Elizabeth Lee, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made and done, we bind ourselves and each of us, ours and each of our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated this 9th day of November, 1833.

Whereas, lately, at a circuit court of the United States for the District of Columbia, sitting for the county of Washington, wherein a certain Samuel Lee and Barbara Lee were plaintiffs, and the said Elizabeth Lee was defendant, judgment was rendered against the said Samuel Lee and Barbara Lee; and they having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the

aforesaid suit; and a citation directed to the said defendant, citing and admonishing her to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of January next: now, the condition of the above obligation is such, that, if the said Samuel Lee and Barbara Lee shall prosecute their writ to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

SAMUEL LEE. [SEAL.]
IGNATIUS LEE. [SEAL.]

Signed, sealed, and delivered, in the presence of
ROBERT CLARKE, *J. Peace.*

Approved: (see Mr. Boyle's certificate.)

W. CRANCH.

UNITED STATES OF AMERICA, *sct. The President of the United States to the judges of the circuit court of the United States for the District of Columbia, sitting for the county of Washington, greeting:*

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, between Samuel Lee and Barbara Lee, plaintiffs, and Elizabeth Lee, defendant, a manifest error hath happened, to the great damage of the said Samuel Lee and Barbara Lee, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid, being inspected, the Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and the custom of the United States, should be done.

Witness, the honorable John Marshall, Chief Justice of the said Supreme Court.

Issued this ninth day of November, 1833.

Test: WILLIAM BRENT, *Clk.*

UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA, WASHINGTON CO. } *ss.*

To Elizabeth Lee.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein Samuel Lee and Barbara Lee are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said Samuel Lee and Barbara Lee, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable William Cranch, Chief Judge of the circuit court for the District of Columbia, this 9th day of November, 1833.

W. CRANCH.

Served the above, by leaving a true copy thereof with Z. C. Lee, esqr., the attorney, on record of Mrs. Elizabeth Lee, this 21st day of November, 1833.

H. ASHTON, *Marshal.*

2203.

SUPREME COURT OF THE UNITED STATES.

No. 99.

SAMUEL HAZARD, ADM'TOR, &c., PLAINTIFF IN ERROR,

VERSUS

THE NEW ENGLAND MARINE INSURANCE CO.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE MASSACHUSETTS DISTRICT.

INDEX.

	Original.	Print.
Assignment of error	1 *a*	2
Writ of error	2 *a*	3
Citation	3 *a*	4
Service	4 *a*	4
Writ and declaration commences at	1	4
Second count in declaration	8	8
Third count in the declaration	11	9
Fourth count in the declaration	14	10
Fifth count in the declaration	17	12
Sixth count in the declaration	19	13
Seventh count in the declaration	27	16
Eighth count in the declaration	31	18
Ninth count in the declaration	32	18
Tenth count in the declaration	32	18
Eleventh count in the declaration	32	18
New count	36	20
Pleas and issue	40	22
Verdict and judgment	40	22
Bill of exceptions commences at page	41	22
(Contents of bill of exceptions, viz.)		
Declaration, with recital of policy	42	23
And recital of the several counts, as above, in the following pages:		
Pleas	82	39
Plaintiff's evidence, viz.		
Letter, Capt. Gardner to owner, Hondulu, 19 March, 1830	83	39
Plaintiff's abandonment	84	40
Defendant's reply, and refusal to accept abandonment	84	40
Register of ship Dawn	85	41
Plaintiff's interrogatories to witnesses	86	41
Cross-interrogatories by defendants to ditto	93	44
Deposition of Richard N. Skaats	102	48

Deposition of Peter McNamara	107	50
of Henry Gardner	116	54
of Nathan Hildreth	141	64
of Zebedee Ring	158	71
of Griffith Griffiths	165	74
of James Karley	170	76
Plaintiff's interrogatories to Elizur Foster, witness	174	78
Cross-interrogatories by defendent, to ditto	176	78
Deposition of Elizur Foster	182	81
Defendant's evidence, viz.		
Evidence of Josiah Bradlee	197	87
Deposition of Henry Gardner	199	88
Master's protest at St. Salvador	230	101
Do do at Oahu	231	101
Survey at Oahu	236	103
Second survey at ditto	238	104
Third survey at do	239	104
Deposition of Frederic Barlow	241	105
Evidence of William Blanchard	254	111
of Lewis Henchman	255	111
of Hunnewell	256	112
of Athens Adams	257	11
of Charles W. Cartwright	258	112
of Daniel Ballard	259	113
of Joseph Hart	260	113
of Nickerson	260	113
Plaintiff's evidence, viz.		
Evidence of Stephen G. Hyler	261	113
of Lot Wheelwright	262	114
Defendant's evidence, viz.		
Evidence of Allen	263	114
Plaintiff's evidence, viz.		
Former application to insure ship Dawn	264	114
Former policy of insurance on said ship	265	115
Presiding justice's charge to the jury	271	117
Clerk's certificate and seal	277	119

To the chief justice and the associate justices of the Supreme Court of the United States, to be holden at Washington, being the present seat of the National Government, on the second Monday in January, in the year of our Lord one thousand eight hundred and thirty-three.

Complains, Samuel Hazard, of the city, county, and State of New York, merchant, and a citizen of said State of New York, administrator with the will annexed, in and for the Commonwealth of Massachusetts, of the goods and estate of Thomas Hazard, junior, late of said city of New York, merchant, deceased; who, at the time of his decease, was a citizen of said State of New York.

That in the record of a suit, wherein said Samuel Hazard, administrator as aforesaid, was plaintiff, and The New England Marine Insurance Com-

pany, a corporation established, and transacting business in the city of Boston, in the county of Suffolk, in the distr ct of Massachusetts, all the corporators whereof are citizens of said Massachusetts, is defendant, in a plea of trespass on the case, in the circuit court of the United States for the first circuit, begun and holden at Boston, within and for the Massachusetts district, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and thirty-two, whereof an authenticated transcript in the said Supreme Court shall be produced; the following manifest error hath intervened, viz. that the judgment in the said suit is, "That the said plaintiff take nothing by his said writ, and that the said New England Marine Insurance Company recover against the said Samuel Hazard, administrator as aforesaid, c sts of suit." Whereas, it ought to be "That the said Samuel Hazard, administrator as aforesaid, recover against the said New England Marine Insurance Company the sum of dollars damage, and costs of suit."

Wherefore, the said Samuel Hazard, administrator as aforesaid, prays the consideration of the justices aforesaid; and that the judgment aforesaid, and every part thereof, may be recovered.

SAMUEL HAZARD *Adm'tor of*
THOMAS HAZARD, *Deceased, for*
E. HASKET DERBY, *Attorney.*

UNITED STATES, *ss.*

The President of the United States to the Judges of the Circuit Court, holden in and for the District of Massachusetts, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between Samuel Hazard, of the city, county, and State of New York, merchant, administrator, &c., plaintiff, and the New England Marine Insurance Company, a corporation established and doing business in Boston, in said district of Massachusetts, defendants, in a plea of trespass on the case, a manifest error has intervened to the great damage of the said Samuel Hazard, administrator, as in his complaint has been stated. And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then, under your seal, you do distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the second Monday of January next, at Washington, being the present seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness, the honorable John Marshall, esquire, Chief Justice of the said Supreme Court, at Washington aforesaid, this fourth day of November, in the year of our Lord one thousand eight hundred and thirty-three, and of the independence of the United States the fifty-eighth.

JNO. M. DAVIS, *Clerk.*

Allowed by John A. Davis, judge of Massachusetts district court.

UNITED STATES OF AMERICA, *Massachusetts District, ss.*

To the New England Marine Insurance Company, a corporation established and transacting business in the city of Boston, in the county of Suffolk in the District of Massachusetts, all the corporators whereof are citizens of said Massachusetts, greeting:

Whereas, there has issued from the Supreme Court of the United States, a writ of error, bearing date on the fourth day of November, A. D. 1833, directed to the judges of the circuit court of the United States holden in and for the Massachusetts district, wherein it is suggested that, in the record and process, and also in the rendering of judgment in a suit between Samuel Hazard, of the city, county, and State of New York, merchant, and a citizen of said State of New York, administrator, with the will annexed, in and for the Commonwealth of Massachusetts, of the goods and estate of Thomas Hazard, junior, late of said city of New York, merchant, deceased, who, at the time of his decease, was a citizen of said State of New York, as plaintiff, and you as defendants, in a plea of trespass on the case, manifest error has intervened to the great damage of the said plaintiff, and the said judges are by the said writ commanded, if judgment thereof be given, that, under their seals, distinctly and openly, they send the record and process in the suit aforesaid, with all things concerning them, together with the said writ, so that they have the same before the chief justice and the associate justices of the Supreme Court of the United States on the second Monday in January, A. D. 1834, at Washington, being the present seat of the National Government; that the record and process aforesaid, being inspected, they may cause to be done thereupon what of right out to be done. You therefore, the said New England Marine Insurance Company, are hereby notified of the said writ of error, and of the filing of the same as aforesaid, and cited to appear, if you see cause, at the said Supreme Court, to be holden as aforesaid, to make answer thereto.

Given under my hand and seal, at Boston, this fourth day of November, A. D. 1833, in the fifty-eighth year of the independence of the United States of America.

J. DAVIS,
United States' District Judge for Massachusetts District.

UNITED STATES OF AMERICA, *District of Massachusetts.*

BOSTON, *16th November*, 1833.

I hereby certify, that I have notified the New England Marine Insurance Company, named to appear as herein directed, by leaving at the office of the said New England Marine Insurance Company, in State street, a true and attested copy of this citation.

HENRY HARRIS.
Deputy Marshal.

UNITED STATES OF AMERICA, *Massachusetts District, ss.*

At the circuit court of the United States for the first circuit, begun and holden at Boston, within and for the Massachusetts district, on Monday the fifteenth day of October, in the year our of Lord one thousand eight hundred and thirty-two.

Before the honorable

JOSEPH STORY, *Associate Judge.*
JOHN DAVIS, *District Judge*

SAMUEL HAZARD, of the city, county, and State of New York, merchant, and a citizen of said State of New York, administrator with the will annexed, in and for the Commonwealth of Massachusetts, of the goods and estate of Thomas Hazard, junior, late of said city of New York, merchant, deceased, who, at the time of his decease, was a citizen of said State of New York, plaintiff,

versus

The NEW ENGLAND MARINE INSURANCE COMPANY, a corporation established and transacting business in the city of Boston, in the county of Suffolk, in the district of Massachusetts, all the corporators whereof are citizens of said Massachusetts, defendant.

In a plea of trespass on the case, for, that the said Thomas Hazard, junior, by Josiah Bradlee and George B. Carey, both of said Boston, merchants and copartners, jointly transacting business under the firm and style of Josiah Bradlee and Company, agents of the said Thomas Hazard, junior, in this behalf, at said Boston, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, according to the usage and customs of merchants, caused to be made a certain writing, commonly called a policy of insurance, in the words and figures following, to wit:

No. *By the New England Marine Insurance Company.*

Form of policies adopted by all the insurance offices in Boston, Sep. 1, 1823.

This policy of insurance witnesseth, that the President and Directors of New England Marine Insurance Company do, by these presents, cause to be assured, lost or not lost, Josiah Bradlee and Co., for Thomas Hazard, junior, of New York, fifteen thousand dollars on the ship Dawn, and outfits at and from New York to the Pacific ocean, and elsewhere, on a whaling voyage, during her stay and fishing, and until her return to New York, or port of discharge in the United States, with the liberty to touch at any places for refreshments, and also with liberty to ship home oil in any vessel without prejudice to this policy, oil when on board to be in lieu of outfits, and valued at 60 cents per gallon; whereof, is master, for this present voyage, Henry Gardner, or whosoever else shall be master in the said vessel, or by whatsoever other name or names the said vessel or master thereof is, or shall be named or called; beginning the adventure upon the said vessel, &c. as aforesaid, and to continue during the voyage as aforesaid, on the vessel until she shall be arrived and moored at anchor twenty-four hours in safety, and on the property until landed. And it shall be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather, or other unavoidable accidents, without prejudice to this assurance. Touching the adventures and perils which the said Insurance Company are contented to bear, and take upon them in this voyage, they are, of the seas, fire, enemies, pirates, assailing thieves, restraints, and detainments of all kings, princes, or people, of what nation or quality soever, barratry of the master, (unless the assured be owner of the vessel,) and of mariners, and all other losses and misfortunes which have or shall come to the damage of the said vessel, &c., or any part thereof, to which assurers are liable by the rules and customs of assurance in Boston: provided, that the assurers shall

Sum insured $15,000.

not be liable for any partial loss on sugar, flaxseed, bread, tobacco, and rice, unless the loss amount to seven per cent. on the whole aggregate value of such articles; nor for any partial loss on salt, grain, hemp, flax, fish, fruit, sides, skins, or other goods that are esteemed perishable in their own nature, unless it amount to seven per cent. on the whole aggregate value of such articles, and happen by stranding; nor for any partial loss on other goods, or on the vessel or freight, unless it amount to five per cent. exclusive, in each case, of all charges and expenses incurred for the purpose of ascertaining and proving the loss; but the owners of such goods shall recover on a general average. And in case of any loss or misfortune, it shall be lawful for the assured, their factors, servants, and assigns, to sue, labor, and travel for, in and about the defence, safeguard, and recovery of said vessel, &c., or any part thereof, without prejudice to this assurance, to the charges whereof the said Insurance Company will contribute, in proportion as the sum assured is to the whole sum at risk. And so the president and directors aforesaid are contented, and do hereby bind the capital, stock, and other common property of the said Insurance Company, to the assured, executors, adminisirators, and assigns, for the true performance of the premises, confessing themselves paid the consideration due unto them for this assurance, by the assured, at and after the rate of eight per cent.

Vessel valued at $15,000, & outfits $10,000, each subject to its own average.

Premium.
$1,200
1
$1,201

And it is hereby agreed that, if the assured shall have made any other assurance upon the vessel, &c., aforesaid, prior in date to this policy, then the said Insurance Company shall be answerable only for so much as the amount of such prior assurance may be deficient towards fully covering the property at risk, whether for the whole voyage, or from one port of lading or discharge to another; and the said Insurance Company shall return the premium, or, a rateable part thereof, upon so much of the sum by them assured, or for such part of the voyage, as they shall be exonerated from by such prior insurance, excepting half per cent., which shall be retained in all cases of return premium: provided, that no return premium shall be made for any passage whereon the risk has once commenced. And in case of any assurance upon the said vessel, &c., whether it be for the whole or part of the voyage, subsequent in date to this policy, the said Insurance Company shall, nevertheless, be answerable to the full extent of the sum by them herein assured, without right to claim contribution from such subsequent assurers; and shall accordingly be entitled to retain the premium by them received in the same manner as if no such subsequent assurance had been made. And in case of loss, the assured is to abate one per centum; and such loss shall be paid in sixty days after proof and adjustment thereof, the amount of the premium note, if unpaid, and all sums due to the company from the assured, when such loss becomes due, being first deducted, and all sums coming due being first paid or secured to the satisfaction of the said president and directors, they discounting interest for anticipating payment. It is also agreed that, in case of capture or detention, the assured shall not have the right to abandon therefor, until proof is exhibited of condemnation, or of the continuance of the detention, (by capture or other arrest,) for at least ninety days; and that the assured shall not abandon in consequence of the port of detention being blockaded, but the vessel shall, in such case, have liberty to proceed to another port not blockaded, and there end the voyage, or wait a reasonable time for the blockade of the original port of destination

to be raised; and that the acts of the assured or assurers in recovering, saving, and preserving the property insured in case of disaster, shall not be considered a waiver or acceptance of an abandonment.

It is also agreed, that the assurers shall not be answerable for any charge, damage, or loss, which may arise in consequence of seizure or detention, for, or on account of, illicit or prohibited trade, or trade in articles contraband of war; but the judgment of a foreign consular, or a colonial court, shall not be conclusive upon the parties, as to the fact of there having been articles contraband of war on board, or as to the fact of an attempt to trade in violation of the laws of nations. It is also agreed, that this policy shall be void in case of its being assigned, transferred, or pledged without the previous consent in writing of the assurers. It is also agreed, that the assured shall not have the right to abandon the vessel for the amount of damage merely, unless the amount which the assurers would be liable to pay under an adjustment as of a partial loss, shall exceed half the amount insured, and in case of a total loss of the vessel with salvage, the amount allowed out of the salvage to the officers and crew, for wages earned, or services rendered previouslyto the loss, shall be considered as so much of the salvage applied to the use of the ship owners, even although the same should be allowed or paid under the name of salvage, and not as wages, and shall accordingly be deducted in adjusting the loss. It is further agreed, that if any dispute shall arise, relating to a loss on this policy, it shall be submitted to the judgment and determination of arbitrators mutually chosen, whose award in writing shall be conclusive and binding on all parties.

In witness whereof, the President of the said New England Insurance Company hath hereunto subscribed his name, and caused the same to be countersigned by their secretary, at their office in Boston, this twenty-sixth day of December, one thousand eight hundred and twenty-seven.

JAMES HALL, *President.*

JOHN WATERS, *Secretary.*

And the plaintiffs avers that the said policy of insurance, so made by the said Bradlee & Carey, the agents of the said Thomas Hazard, jun., in this behalf, was made for the use and benefit of the said Thomas.

Of which policy of insurance, made as above set forth, the said company had notice on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred twenty-seven; and thereupon, there afterwards, on the same day, in consideration, that the said Thomas, by his agents in this behalf, the said Bradlee and Carey, had paid the said company the sum of twelve hundred dollars as a premium for the assurance of fifteen thousand dollars on the ship Dawn, and her outfits in said policy of insurance mentioned, and valued at the sums therein severally set forth, and had promised to perform all things contained in the said policy of insurance on his, the said Thomas Hazard, junior's part, to be performed; the said company promised the said Thomas that they would become, and they then and there did become assurers of the said vessel and outfits, and oil in the lieu of outfits, for the period aforesaid, according to the tenor and effect of the policy of insurance aforesaid, for the said sum of fifteen thousand dollars, to be assured according to said policy. In witness whereof, they caused the said policy to be signed by their president, and countersigned by their secretary.

And the plaintiff further says, that the said Thomas was then and there, and continually afterwards, until his decease, interested in said ship, outfits, and oil in lieu of outfits, to a large value and amount, to wit, to the value and amount of all the moneys by him ever assured thereon, to wit, at said Boston, and since his decease, the said Samuel in his said capacity has continued so interested therein until, and at the time of the loss herein after mentioned. And the plaintiff further says that the said ship Dawn, with her outfits on board, sailed from said port of New York on her said voyage, on the thirtieth day of December, in the year last above mentioned, and in the course of her voyage, and on the high seas, took on board, and made from whales, a large quantity of oil in lieu of outfits, to wit, three thousand barrels of oil, and that afterwards, to wit, on the first day of February, in the year of our Lord one thousand eight hundred and thirty, and subsequent to the decease of the said Thomas; but during the continuance of the risks and perils in said policy of insurance mentioned, and thereby insured against, the said ship Dawn and her outfits, and oil on board, were, by the perils and dangers of the sea, totally lost, and never did arrive at said port of New York, or any port of discharge in the United States, to wit, at said Boston. Of all which, the said company, on the twenty-third day of November, now last past, had notice and proof; and although the said Thomas, during his life time, and the said Samuel, since the decease of the said Thomas, have done and performed all things on the part of the said Thomas, by virtue of said policy required to be done and performed, and although sixty days have elapsed since said notice and proof, yet the said company have not paid the said Thomas in his life time, nor the said Samuel since his decease, the aforesaid sum of fifteen thousand dollars, or any part thereof, but neglect, and refused so to do.

2d. And also, for that the said Thomas at said Boston, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, by the said Bradlee and Carey, his agents in this behalf, according to the usage and custom of merchants, caused to be made a certain other policy of insurance, in the same words and figures with that herein before set forth, which said policy the plaintiff avers was so made for the use and benefit of the said Thomas. Of which policy of insurance so made, the said company afterwards, to wit, on the said twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, at said Boston, had notice, and thereupon thereafterwards on the same day, in consideration that the said Thomas had paid to the said company the sum of twelve hundred dollars as premium for the assurance of fifteen thousand dollars on the said ship Dawn and her outfits, and oil in lieu of outfits, valued at the sums severally set forth in said policy of insurance, and had promised to perform all things on his, the said Thomas' part to be performed, the said company promised the said Thomas that they would become, and they then and there did become the assurers of the said vessel and her outfits and oil, in lieu of outfits for the period mentioned in said policy of insurance last named, according to the tenor and effect of said last named policy, for the said sum of fifteen thousand dollars, to be assured according to the said policy. In witness whereof, they caused the said last named policy of insurance to be signed by their president, and countersigned by their secretary.

And the said plaintiff further says, that the said Thomas was then and there, and continually afterwards, until his decease, interested in said ship

Dawn and her outfits and oil, to a large amount and value, to wit, to the amount and value of all the sums so caused by the said Thomas, to be insured thereon, to wit, at said Boston, and the said Samuel, in his said capacity, continued so interested therein until the loss hereinafter mentioned.

And the plaintiff further says, that heretofore, to wit, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, the said ship Dawn, with her outfits laden on board, sailed from the port of New York, on her said voyage, and there afterwards, in the course of said voyage, to wit, on the high seas, on the first day of January, in the year of our Lord one thousand eight hundred and twenty-eight, and at divers times between that period and the first day of February, in the year of our Lord one thousand eight hundred and thirty, a large amount and quantity of oil, to wit, the quantity of three thousand barrels of oil, was procured, made, and taken on board said ship in lieu of outfits, and thereafterwards, during the continuance of the risks in said policy mentioned, and thereby insured against, and while the said ship was pursuing her said voyage, subsequent to the decease of said Thomas, to wit, in the Pacific Ocean, to wit, on the first day of February, in the year of our Lord one thousand eight hundred and thirty, she was, by the perils and dangers of the sea, and by stormy and tempestuous weather, and the violence of the winds and waves, strained, broken, damaged, spoiled, and destroyed, and the said ship, with said outfits and oil so on board thereof as aforesaid, thereby then and there became, and were wholly lost to the plaintiff, to wit, at said Boston, in the day and year last aforesaid; and the said ship, outfits and oil, never did arrive at said port of New York, or any other port of discharge in the United States—of all which the said company thereafterwards, to wit, on the twenty-third day of November last past, had notice and proof; and although the said Thomas, during his life time, and the said Samuel, since his decease, have done and performed all things on the part of said Thomas, by virtue of said policy to be done and performed, and although sixty days have elapsed since said notice and proof, yet the said company have not paid the said Thomas in his life time, nor the said Samuel since his decease, the aforesaid sum of fifteen thousand dollars, or any part thereof, but neglect and refuse so to do.

3d. And also, for that the said Thomas, at said Boston, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, according to the usage and custom of merchants by the said Bradlee and Carey, his agents in this behalf, caused to be made a certain other policy of insurance in the same words and figures with that hereinbefore set forth, which said policy the plaintiff avers was so made for the use and benefit of the said Thomas, of which policy of insurance so made, the said company thereafterwards, to wit, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, had notice, and thereupon, thereafterwards, on the same day, in consideration that the said Thomas had paid to the said company the sum of twelve hundred dollars as premium for the assurance of fifteen thousand dollars on the said ship Dawn and her outfits, and oil in lieu of outfits, valued at the sums severally set forth in said policy and mentioned therein, and had promised to perform all things therein mentioned on his, the said Thomas's part to be performed, the said company promised the said Thomas that they would become, and they then and there did become assurers o the said vessel and her outfits, and oil in lieu of outfits, for the period men-

tioned in said policy of insurance last named, according to the tenor and effect of said last named policy, for the said sum of fifteen thousand dollars, to be assured according to the said policy. In witness whereof, they caused said last named policy to be signed by their president, and countersigned by their secretary.

And the plaintiff further says that the said Thomas was then and there, and continually afterwards until his decease, interested in said ship and outfits, and oil in lieu of outfits, to a large value and amount, to wit, to the value and amount of all the moneys by him ever insured thereon, to wit, at said Boston; and since his decease, the said Samuel, administrator as aforesaid, has continued so interested therein, until and *and* at the time of the loss hereinafter mentioned.

And the plaintiff further says, that the said ship Dawn with her outfits laden on board, sailed from the port of New York on her said voyage, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, and thereafterwards, in the course of said voyage, to wit, on the high seas on the first day of January, in the year of our Lord one thousand eight hundred and twenty-eight, and at divers times between that period and the first day of February, in the year of our Lord one thousand eight hundred and thirty, a large amount and quantity of oil, to wit, the quantity of three thousand barrels of oil, was procured, made and taken on board said ship in lieu of outfits, and thereafterwards, subsequent to the decease of said Thomas, but during the continuance of the risks in said policy mentioned, and thereby insured against, and while the said ship was pursuing said voyage, to wit, on the high seas, she was greatly weakened and damaged, and destroyed by worms, and by and through the force of certain hurricanes, and by and through the force and violence of certain gales of wind and stormy and tempestuous weather, and by and through the perils and dangers of the sea, the said ship sprung a leak, and became greatly damaged, insomuch that, by means thereof, the said ship was forced and obliged to, and did put into the port of Honnololu, in the island of Oahoo, where the said ship and her said outfits and oil on board, by the risks and perils of the sea aforesaid, were totally lost, to wit, on the first day of February, in the year of our Lord one thousand eight hundred and thirty. Of all which the said company on the first day of December now last past had notice and proof, and although the said Thomas in his life time, and the said Samuel since the decease of the said Thomas, have done and performed all things on the part of the said Thomas to be done and performed by virtue of said policy, and although sixty days have elapsed since said notice and proof, yet the said company have not paid the said Thomas in his life time, nor, since his decease, the said Samuel, the aforesaid sum of fifteen thousand dollars, or any part thereof, but neglect and refuse so to do.

4th. And also, for that the said Thomas, at said Boston, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty seven, by the said Bradlee and Carey, his agents in this behalf, according to the usage and custom of merchants, caused to be made a certain other policy of insurance in the same words and figures with that hereinbefore set forth, which said policy the plaintiff avers was so made for the use and benefit of the said Thomas; of which policy of insurance so made the said company afterwards, to wit, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, had notice,

and thereupon thereafterwards, on the same day, in consideration that the said Thomas, by his said agents, had paid to the said company the sum of twelve hundred dollars, as premium for the assurance of fifteen thousand dollars on the said ship Dawn and her outfits, and oil in lieu of outfits, valued at the sums severally set forth in said last named policy, and had promised to perform all things on his, the said Thomas's, part to be performed, the said company promised the said Thomas that they would become, and they then and there did become, assurers of the said vessel and outfits, and oil in the lieu of outfits, for the period aforesaid, according to the tenor and effect of the policy of insurance aforesaid, for the said sum of fifteen thousand dollars, to be assured according to said policy. In witness whereof, they caused the said policy to be signed by their president, and countersigned by their secretary.

And the plaintiff further says that the said Thomas was then and there, and continually afterwards until his decease, interested in said ship and outfits, and oil in lieu of outfits, to a large value and amount, to wit, to the value and amount of all the moneys by him ever insured thereon, to wit, at said Boston, and since his decease the said Samuel, administrator as aforesaid, has continued so interested therein until and at the time of the loss hereinafter mentioned.

And the plaintiff further says that the said ship Dawn, with her outfits laden on board, sailed from the port of New York on her said voyage, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, and thereafterwards, in the course of said voyage, to wit, on the high seas, on the first day of January, in the year of our Lord one thousand eight hundred and twenty-eight, and at divers times between that period and the first day of February, in the year of our Lord one thousand eight hundred and thirty, a large amount and quantity of oil, to wit, the quantity of three thousand barrels of oil, was procured, made and taken on board said ship in lieu of outfits.

And the plaintiff further says, that, at the time when said policy of insurance was made, and when she sailed on said voyage, she was well and sufficiently secured and protected by good and sufficient sheathing of copper, leather, and other proper materials, against worms and such like destructive insects in the sea, of all which the said company had notice at the time of making said policy. And while the said ship was pursuing her said voyage, subsequent to the decease of said Thomas, but during the continuance of the risks of said policy mentioned and thereby insured against, the said sheathing was so abraded and torn off from said vessel by and through the perils of the sea, and by striking upon hidden rocks, and by the violence of the winds and waves, that the keel and stem, and certain other parts of said vessel, became thereby exposed to be, and were greatly eaten, corroded and damaged by worms, and thereby, and by the force of certain hurricanes of wind, and strong and tempestuous weather and perils of the sea, the said vessel was greatly broken and damaged, and rendered of no use or value to the owner; and, with her said outfits and oil, was, subsequent to the decease of said Thomas, and during the continuance of the risks in said policy mentioned and thereby insured against, and by means of the perils and dangers aforesaid, totally lost, to wit, at said Boston, on the first day of February, in the year of our Lord one thousand eight hundred and thirty; of all which the said company on the first day of December now last past had notice and proof: and although the said Thomas, in his lifetime, and, since his

decease, the said Samuel, have done and performed all things on the part of the said Thomas required to be done and performed by virtue of said policy, and although sixty days have elapsed since said notice and proof, yet the said company have not paid said sum of fifteen thousand dollars, or any part thereof, to the said Thomas in his lifetime, or since his decease to the said Samuel, but neglect and refuse so to do.

5th. And also for that the said Thomas, at said Boston, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, by the said Bradlee & Carey, his agents in this behalf, according to the usage and custom of merchants, caused to be made a certain other policy of insurance in the same words and figures with that hereinbefore set forth, which said policy the plaintiff avers was so made for the use and benefit of the said Thomas; of which policy of insurance so made the said company afterwards, to wit, on the twenty sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, at said Boston, had notice; and thereupon thereafterwards, on the same day, in consideration that the said Thomas had paid to the said company the sum of twelve hundred dollars as premium for the assurance of fifteen thousand dollars on the said ship Dawn and her outfits, and oil in lieu of outfits, in said last named policy mentioned, and promised to perform all things in said policy mentioned, on the part of the said Thomas to be performed; the said company promised the said Thomas that they would become, and they then and there did become, assurers of the said vessel and her outfits and oil for the period mentioned in said policy last named, according to the tenor and effect of said last named policy, for the sum of fifteen thousand dollars, to be assured according to said policy. In witness whereof, they caused said last named policy to be signed by their president, and countersigned by their secretary. And the plaintiff further says, that the said Thomas was then and there, and continually afterwards until his decease, interested in said ship and outfits, and oil in lieu of outfits, to a large value and amount, to wit, to the value and amount of all the moneys by him ever insured thereon, to wit, at said Boston, and since his decease the said Samuel, administrator as aforesaid, has continued so interested therein until and at the time of the loss hereinafter mentioned.

And the plaintiff further says, that the said ship Dawn, with her outfits laden on board, sailed from the port of New York, on her said voyage, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, and thereafterwards, in the course of said voyage, to wit, on the high seas, on the first day of January, in the year of our Lord one thousand eight hundred and twenty-eight, and at divers times between that period and the first day of February, in the year of our Lord one thousand eight hundred and thirty, a large amount and quantity of oil, to wit, a quantity of three thousand barrels of oil, was procured, made, and taken on board said ship in lieu of outfits; and thereafterwards, subsequent to the decease of said Thomas, but during the continuance of the risks of said policy mentioned, and thereby insured against, and while the said ship was pursuing her said voyage on the high seas by striking on hidden rocks, and by tempestuous weather, and by the violence of the winds and waves and perils of the sea, the said ship was greatly broken, damaged and strained, and rendered of no value, and with her outfits and oil on board was thereby totally lost, to wit, at said Boston, on the day and year last above named; of all which the said company, to wit, at said Boston, on the twen-

ty-third day of November, in the year of our Lord one thousand eight hundred and thirty, had notice and proof: and although the said Thomas in his lifetime, and since the decease of said Thomas, the said Samuel have done and performed all things on the part of said Thomas by said policy required to be done and performed, and although sixty days have elapsed since said notice and proof, yet the said company have not paid the said sum of fifteen thousand dollars, or any part thereof, to the said Thomas in his lifetime, nor since his decease to the said Samuel, but neglect and refuse so to do.

6th. And, also, for that the said Thomas, by Josiah Bradlee and George B. Carey, both of said Boston, joint traders under the firm and style of Josiah Bradlee and Company, agents of the said Thomas in this behalf, at said Boston, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, according to the usage of merchants, caused to be made a certain other writing, usually called a policy of insurance, in the words and figures following, to wit:

[No. *By the New England Marine Insurance Company.*

Form of Policies adopted by all the Insurance Offices in Boston, Sept. 1, 1833.

This policy of insurance witnesseth, that the President and Directors of the New England Marine Insurance Company do, by these presents, cause to be assured, lost or not lost, fifteen thousand dollars on the ship Dawn and outfits, at and from New York to the Pacific Ocean, and elsewhere, on a whaling voyage, during her stay and fishing, and until her return to New York or port of discharge in the United States, with liberty to touch at any places for refreshments, and also with liberty to ship home oil in any vessel, without prejudice to this policy,—oil when on board to be in lieu of outfits, and valued at 60 cents per gallon, whereof is master for this present voyage, Henry Gardner, or whosoever else shall be master in the said vessel, or by whatsoever other name or names the said vessel, or master thereof, is, or shall be named or called: beginning the adventure upon the said vessel, &c. as aforesaid, and to continue during the voyage as aforesaid on the vessel, until she shall be arrived and moored at anchor twenty four hours in safety, and on the property until landed. And it shall be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather, or other unavoidable accidents, without prejudice to this assurance.

Sum insured $15,000.

Touching the adventures and perils which the said Insurance Company are contented to bear, and take upon them in this voyage, they are of the seas, fire, enemies, pirates, assailing thieves, restraints, and detainments of all kings, princes, or people of what nation or quality soever, barratry of the master, (unless the assured be owner of the vessel) and of mariners, and all other losses and misfortunes which have, or shall come to the damage of the said vessel, &c. or any part thereof, to which assurers are liable by the rules and customs of assurance in Boston, provided that the assurers shall not be liable for any partial loss on sugar, flaxseed, bread, tobacco and rice, unless the loss amount to seven per cent. on the whole aggregate value of such articles, nor for any partial loss on salt, grain, hemp, flax, fish, fruit, hides, skins, or other goods that are esteemed perishable in their own nature, unless it amount to seven per cent. on the whole aggregate value of such articles, and happen by stranding; nor for any partial loss on other

goods, or on the vessel or freight, unless it amount to five per cent., exclusive, in each case, of all charges and expenses incurred for the purpose of ascertaining and proving the loss; but the owner of such goods shall recover on a general average. And in case of any loss or misfortune, it shall be lawful for the assured, their factors, servants, and assigns, to sue, labor, and travel for, in and about the defence, safeguard, and recovery of the said vessel, &c., or any part thereof, without prejudice to this assurance, to the charges whereof the said Insurance Company will contribute, in proportion as the sum assured is to the whole sum at risk. And so the president and directors aforesaid are contented, and do hereby bind the capital stock and other common property of the said Insurance Company to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing themselves paid the consideration due unto them for this assurance, by the assured, at and after the rate of eight per cent.

Outfits valued at $10,000. Vessel valued at $15,000. Premium not included; each subject to its own average. Premium $1,200; Policy, 1.

$1,201

And it is hereby agreed that, if the assured shall have made any other assurance upon the vessel, &c. aforesaid, prior or in date to this policy, then the said Insurance Company shall be answerable only for so much as the amount of such prior assurance may be deficient towards fully covering the property at risk, whether for the whole voyage, or from one port of lading or discharge to another; and the said Insurance Company shall return the premium, or a rateable part thereof, upon so much of the sum by them assured, or for such part of the voyage as they shall be exonerated from by such prior insurance, excepting half per cent., which shall be retained in all cases of return premium: provided, that no return premium shall be made for any passage whereon the risk has once commenced. And in case of any assurance upon the said whether it be for the whole or part of the voyage, subsequent in date to this policy, the said Insurance Company shall nevertheless be answerable to the full extent of the sum by them herein assured, without right to claim contribution from such subsequent assurers; and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent assurance had been made. And in case of loss, the assured is to abate one per centum; and such loss shall be paid in sixty days after proof and adjustment thereof, the amount of the premium note, if unpaid, and all sums due to the company from the assured, when such loss becomes due, being first deducted, and all sums coming due being first paid or secured to the satisfaction of the said president and directors, they discounting interest for anticipating payment. It is also agreed that, in case of capture or detention, the assured shall not have the right to abandon therefor, until proof is exhibited of condemnation, or of the continuance of the detention, (by capture or other arrest) for at least ninety days; and that the assured shall not abandon in consequence of the port of destination being blockaded, but the vessel shall in such case have liberty to proceed to another port not blockaded, and there end the voyage, or wait a reasonable time for the blockade of the original port of destination to be raised: and that the acts of the assured or assurers in recovering, saving, and preserving the property insured in case of disaster, shall not be considered a waiver or acceptance of an abandonment.

It is also agreed that the assurers shall not be answerable for any charge, damage, or loss, which may arise in consequence of seizure or detention,

for, or on account of, illicit or prohibited trade, or trade in articles contraband of war; but the judgment of a foreign consular or colonial court shall not be conclusive upon the parties as to the fact of there having been articles contraband of war on board, or as to the fact of an attempt to trade in violation of the laws of nations.

It is also agreed that this policy shall be void in case of its being assigned, transferred, or pledged, without the previous consent in writing of the assurers. It is also agreed that the assured shall not have the right to abandon the vessel for the amount of damage merely, unless the amount which the assurers would be liable to pay under an adjustment as of a partial loss, shall exceed half the amount insured, and in case of a total loss of the vessel with salvage, the amount allowed out of the salvage to the officers and crew for wages earned, or services rendered previously to the loss, shall be considered as so much of the salvage applied to the use of the ship owners, even although the same should be allowed or paid under the name of salvage, and not as wages, and shall accordingly be deducted in adjusting the loss. It is further agreed, that if any dispute shall arise relating to a loss on this policy, it shall be submitted to the judgment and determination of arbitrators mutually chosen, whose award, in writing, shall be conclusive, and binding on all parties. In witness whereof, the president of the said N. E. M. Insurance Company hath hereunto subscribed his name, and caused the same to be countersigned by their secretary, at their office in Boston, this twenty-sixth day of December, one thousand eight hundred and twenty-seven.

JAMES HALL, *President.*

JOHN WATERS, *Secretary.*

Which said policy the plaintiff avers was so made for the use and benefit of the said Thomas. Of which policy of insurance, so made, the said company afterwards, to wit, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, at said Boston, had notice; and thereupon, thereafterwards, on the same day, in consideration that the said Thomas, by his said agents, had paid to the said company the sum of twelve hundred dollars as premium for the assurance of fifteen thousand dollars on the said ship Dawn and her outfits, and oil in lieu of outfits, valued at the sums severally set forth in said last named policy, and had promised to perform all things on his, the said Thomas's, part to be performed, the said company promised the said Thomas that they would become, and they then and there did become, assurers of the said vessel and outfits, and oil in lieu of outfits, for the period aforesaid, according to the tenor and effect of the said policy, for the said sum of fifteen thousand dollars, to be assured according to said policy: in witness whereof, they caused the said policy to be signed by their president, and countersigned by their secretary. And the plaintiff further says that the said Thomas was then and there, and, continually afterwards until his decease, interested in said ship and outfits, and oil in lieu of outfits, to a large value and amount, to wit, to the value and amount of all the moneys by him ever insured thereon, to wit, at said Boston; and, since his decease, the said Samuel, administrator as aforesaid, has continued so interested therein until and at the time of the loss hereinafter mentioned. And the plaintiff further says that the said ship Dawn, with her outfits laden on board, sailed from the port of New York on said voyage, on the thirtieth day of December, in the year of our Lord,

one thousand eight hundred and twenty-seven, and thereafterwards, in the course of said voyage, to wit, on the high seas, on the first day of January, in the year of our Lord one thousand eight hundred and twenty-eight, and at divers times between that period and the first day of February, in the year of our Lord one thousand eight hundred and thirty, a large amount and quantity of oil, to wit, the quantity of three thousand barrels of oil, was procured, made, and taken on board said ship in lieu of outfits, and thereafterwards, subsequent to the decease of said Thomas, but during the continuance of the risks in said policy mentioned, and thereby insured against, and while the said ship was pursuing her said voyage on the high seas with said outfits and oil on board, to wit, on the coast of Japan, on the thirteenth day of September, in the year of our Lord one thousand eight hundred and twenty-nine, by the violence of the winds and waves, storms and tempests, and by the rolling and laboring of said ship, and the sea-water which came on board and into said ship, and other perils of the sea, the said outfits and oil on board the said ship Dawn were greatly wasted, spoiled, damaged and carried away, and destroyed, whereby the said plaintiff sustained a partial damage and loss on the said outfits and oil on board, to a larger amount than five dollars to the hundred for each and every hundred dollars insured thereon by the said Thomas, to wit, at Boston aforesaid, and thereafterwards on the same day, by the force and violence of the winds and waves, boisterous and tempestuous weather, and other perils and dangers of the sea, the said ship was greatly strained, broken, and damaged, and sprung a leak, insomuch that, by means thereof, the said ship was forced and obliged to put into the port of Honolulu, where, afterwards, to wit, on the first day of February, in the year of our Lord one thousand eight hundred and thirty, the said ship and her outfits and oil on board, by the dangers and perils of the sea aforesaid, and the violence of the winds and waves, were totally lost, and become of no value to the plaintiff, administrator as aforesaid. Of all which said premises the said company afterwards, to wit, at said Boston, on the twenty-third day of November last, had notice and proof; and although the said Thomas in his lifetime, and since his decease the said Samuel, have done and performed all things on the part of said Thomas by said policy required to be done and performed, and although sixty days have long since elapsed since said notice and proof, yet the said company have not paid said sum of six hundred dollars, or any part thereof, to the said Thomas during his lifetime, nor since his decease to the said Samuel, but neglect and refuse so to do.

7th. And, also, for that the said Thomas, by Josiah Bradlee and George B. Carey, agents of the said Thomas in this behalf, at said Boston, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty seven, according to the usage and custom of merchants, caused to be made a certain other writing, usually called a policy of insurance, in the same words and figures with that set forth in the last preceding count, which said policy the plaintiff avers was so made for the use and benefit of the said Thomas. Of which policy so made, the said company thereafterwards, to wit, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, at said Boston, had notice; and thereupon, thereafterwards, on the same day, in consideration that the said Thomas had paid to the said company the sum of twelve hundred dollars as premium for the assurance of fifteen thousand dollars on the said Ship Dawn and her outfits and oil in said last named policy mentioned,

and valued at the sums therein severally set forth, and had promised to perform all things in said policy, mentioned on the part of said Thomas to be performed; the said company promised the said Thomas that they would become, and they then and there did become assurers of the said vessel, her outfits, and oil in lieu of outfits, for the period mentioned in said policy last named, according to the tenor and effect of said last named policy, for the sum of fifteen thousand dollars, to be assured according to the said policy: in witness whereof they caused the said policy to be signed by the president, and countersigned by the secretary. And the plaintiff further says, that the said Thomas was then and there, and continually afterwards until his decease, interested in said ship and outfits, and oil in lieu of outfits, to a large value and amount, to wit, to the value and amount of all the moneys by him ever insured thereon. to wit, at said Boston, and, since his decease, the said Samuel, administrator as aforesaid, has continued so interested therein until, and at the time of the loss hereinafter mentioned.

And the plaintiff further says that the ship Dawn, with her outfits laden on board, sailed from the port of New York on her said voyage, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and twenty seven: and there afterwards, in the course of said voyage, to wit, on the high seas, on the first day of January, in the year of our Lord one thousand eight hundred and twenty eight, and at divers times between that period and the first day of February, in the of our Lord one thousand eight hundred and thirty, and a large amount and quantity of oil, to wit, the quantity of three thousand barrels of oil, was procured, made, and taken on board said ship in lieu of outfits, and thereafterwards, subsequent to the decease of said Thomas, but during the continuance of the risks of said policy mentioned, and thereby insured against, and while the said ship was pursuing her said voyage, to wit, on the Pacific ocean, the said Gardner, master of said ship Dawn mentioned in said last named policy, and agent of the said Thomas and Samuel in this behalf, in conformity to the license granted in said policy, shipped a large quantity of oil, to wit, the quantity of two thousand barrels of oil on board a certain brig called the Andes, bound around Cape Horn, into the Altantic ocean, and in a course and direction towards the United States, to wit, on the first day of February, in the year of our Lord one thousand eight hundred and thirty. And the plaintiff avers that the said Andes, with said oil so laden on board, sailed on her said voyage, and thereafterwards, to wit, on the ninteenth day of March, in the year of our Lord one thousand eight hundred and thirty, and while pursuing her said voyage and course towards the United States on the high seas, heretofore, to wit, on the eleventh day of May thence next ensuing, and on divers other days and times between that day and the fifth day of July immediately subsequent, and during the continuances of the risks and perils in said policy mentioned, and thereby insured against, by the violence of the winds, waves, storms, and tempests, and by the excessive rolling and laboring of said vessel and other perils of the seas, the casks containing said oil were started from their places, and greatly strained, dented, shattered, and destroyed, and a large quantity contained therein, to wit, ten thousand gallons of oil, were, by means thereof, lost by leakage, wasted and spoiled, whereby the estate of said Thomas, and the said plaintiff in his capacity aforesaid, sustained an average loss or damage on said outfits and oil to a larger amount than five dollars per hundred dollars on all the money insured thereon, to wit, to the amount of sixty dollars by the hun-

dred, for each and every hundred dollars insured thereon by said company, whereby the said company became liable to pay a rateable part of said loss, to wit, the sum of thirty-six hundred dollars, according to the tenor and effect of said policy, to wit, at said Boston, and thereafterwards, to wit, on the first day of August then next ensuing, the said ship Dawn and her outfits, and oil laden on board, while pursuing her said voyage on the high seas, and during the continuance of the perils assured against in said policy, were, by the dangers and perils of the sea, totally lost. Of all which said premises the said company, afterwards, to wit, at said Boston, on the twenty-third day of November last past, had notice and proof; and although the said Thomas during his lifetime, and, since his decease, the said Samuel, have done and performed all things on the part of said Thomas by said policy required to be done and performed; and although more than sixty days have elapsed since said notice and proof, yet the said company have not paid said sum of three thousand six hundred dollars, or any part thereof, to the said Thomas, or, since his decease, to the said Samuel, but neglect and refuse so to do.

8th. And also for that the said company, at said Boston, on the day of the purchase of this writ, being indebted to the said plaintiff as he, such administrator as aforesaid, on a certain other sum of fifteen thousand dollars, for so much money before that time had and received by the said company, to the use of the plaintiff, as he is administrator as aforesaid, in consideration thereof, then and there promised the plaintiff, as he is administrator as aforesaid, to pay him that sum on demand, yet the said company, although requested, have not paid it, or any part thereof, but neglect and refuse so to do.

9th. And, also, for that the said company, at said Boston, on the day of the purchase hereof, being indebted to the said plaintiff, administrator as aforesaid, in the further sum of fifteen thousand dollars for so much money paid, laid out, and expended by the said plaintiff, administrator as aforesaid, for the use and benefit of the said company, and at their request, in consideration thereof, then and there promised the plaintiff, administrator as aforesaid, to pay him that sum on demand; yet the said company, although requested, have not paid such sum, or any part thereof, but neglect and refuse so to do.

10th. And, also, for that the said company, at said Boston, in the lifetime of the said Thomas, being indebted to the said Thomas in the further sum of fifteen thousand dollars for so much money before that time had and received by the said company to the use of the said Thomas, in consideration thereof, then and there promised the said Thomas to pay him that sum on demand, yet the said company, although requested, have not paid said sum to the said Thomas in his lifetime, nor to the said Samuel, administrator as aforesaid, since his decease, but neglect and refuse so to do.

11th. And, also, for that the said Thomas, by said Bradlee and Carey, agents of the said Thomas in his behalf at the said Boston, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, according to the usage and custom of merchants, caused to be made a certain other writing, usually called a policy of insurance, in the same words and figures with that set forth in the last preceding count, which said policy, the plaintiff avers, was so made for the use and benefit of the said Thomas. Of which policy so made, the said company thereafterwards, to wit, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, at said Boston, had notice; and thereupon, thereafterwards, on the same day, in consideration that

the said Thomas had paid to the said company the sum of twelve hundred dollars as premium for the assurance of fifteen thousand dollars on the said ship Dawn, and her outfits, and oil in lieu of outfits, in said last named policy mentioned, and valued at the sums therein severally set forth, and had promised to perform all things in said policy mentioned on the part of said Thomas to be performed by the said company, promised the said Thomas that they would become, and they then and there did become assurers of the said vessel and her outfits, and oil in lieu of outfits, for the period mentioned in said policy last named, according to the tenor and effect of said last named policy, for the sum of fifteen thousand dollars, to be assured according to said policy. In witness whereof, they caused the said policy to be signed by their president, and countersigned by their secretary. And the plaintiff further says that the said Thomas was then and there, and continually afterwards, until his decease, interested in said ship and outfits, and oil in lieu of outfits, to a large value and amonnt, to wit, to the value and amount of all the moneys by him ever insured thereon, to wit, at said Boston, and since his decease, the said Samuel, administrator as aforesaid, has continued so interested therein, until and at the time of the loss hereinafter mentioned.

And the plaintiff further says, that heretofore, to wit, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, the said ship Dawn, with her outfits laden on board, sailed from the port of New York on her said voyage, and thereafterwards, on the high seas, to wit, on the sixteenth day of January thence next ensuing, the said ship tackle, apparel and furniture thereof, by and through the mere force and violence of certain hurricanes and stormy and tempestuous weather, and the dangers and perils of the seas insured against in and by said policy, were greatly damaged; and certain quarter boat of the value of hundred dollars was stove in pieces and destroyed; and subsequently, in the course of said voyage, and during the continuance of said dangers and perils mentioned in said policy, and while the said ship was lying at anchor in the port of Port au Praya, in the Cape de Verd islands, to wit, on the tenth day of February next ensuing, she was, by the force and violence of the winds and waves, and the perils and dangers of the sea, driven from her moorings, whereby a valuable anchor belonging to the same, usually called the starboard anchor, of the value of five hundred dollars, was broken and destroyed; and, for the preservation of said ship, she was obliged to slip and let go another valuable anchor, usually called the larboard anchor, of the value of five hundred dollars, belonging to the same, which was thereby totally lost; and to repair the damage done to the said ship, and her apparel, tackel, and furniture thereof, as aforesaid, the said ship was then and there necessarily forced and obliged to proceed to the port of St. Salvador, in the Brazils, to repair the same; and the said ship thereupon, and then and there did proceed to said Port of St. Salvador, where the said damage was repaired, and a new boat and two new anchors were purchased and procured to enable said ship to pursue her said voyage; and the necessary expenses incurred by the said Thomas in the premises, amounted to a large sum of money, to wit, to the sum of two thousand dollars, and the said plaintiff further says that, while the said ship was repairing as aforesaid, to wit, at St. Salvador, he was obliged to pay certain charges and expenses, and pilotage, and hire and employ, and pay the wages and maintenance, of certain workmen and seamen, to wit, of forty persons in and on board of said ship Dawn, n the whole amounting to one thousand dollars more; whereby the said

company, according to the tenor and effect of said last named policy of insurance, and of the promise and undertaking thereof, and then and there became, and were liable to pay the rateable part of the charges and expenses aforesaid, which they, the said company, then and there ought to have paid and contributed in respect of said insurance, amounting to a large sum of money, to wit, to the sum of eighteen hundred dollars, to wit, at Boston aforesaid. Of all which said premises, the said company, afterwards, to wit, at said Boston, on the twenty-third day of November last past, had notice and proof; and although the said Thomas, during his lifetime, and, since his decease, the said Samuel, have done and performed all things on the part of said Thomas by the said policy required to be done and performed, and although more than sixty days have elapsed since said notice and proof, yet the said company have not paid said sum of eighteen hundred dollars, or any part thereof, to the said Thomas, or, since his decease, to the said Samuel, but neglect and refuse so to do. All to the damage of the said plaintiff, as he saith in his capacity aforesaid, the sum of twenty thousand dollars. This action was entered at the May term of this court, A. D. 1831, when both parties appeared, and, by leave of court, the said plaintiff filed a new count as follows:

New count. And, also, for that the said Thomas, by Josiah Bradlee and George B. Carey, agents of the said Thomas in this behalf, at said Boston, on the twenty sixth day of December, in the year of Lord one thousand eight hundred and twenty-seven, according to the usage and custom of merchants, caused to be made a certain other writing usually called a policy of insurance, in the same words and figures with that hereinbefore last set forth, which said policy the plaintiff avers was so made for the use and benefit of the said Thomas. Of which policy so made, the said company thereafterwards, to wit, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, at said Boston, had notice; and thereupon, thereafterwards, on the same day, in consideration that the said Thomas had paid to the said company the sum of twelve hundred dollars as premium for the assurance of fifteeen thousand dollars on the said ship Dawn and her outfits and oil in said last named policy mentioned, and valued at the sums therein severally set forth, and had promised to perform all things in said policy mentioned on the part of said Thomas to be performed, the said company promised the said Thomas that they would become, and they then and there did become assurers of the said vessel, and her outfits and oil in lieu of outfits, for the period mentioned in said policy last named, according to the tenor and effect of said last named policy, for the sum of fifteen thousand dollars, to be assured according to the said policy; in witness whereof, they caused the said policy to be signed by their president, and countersigned by their secretary. And the plaintiff further says that the said Thomas was then and there, and continually afterwards until his decease, interested in said ship and outfits, and oil in lieu of outfits, to a large value and amount, to wit, to the value and amount of all the moneys by him ever insured thereon, to wit, at said Boston, and since his decease, the said Samuel, administrator as aforesaid, has continued interested therein until and at the time of the loss hereinafter mentioned. And the plaintiff further says, that the ship Dawn, with her outfits laden on board, sailed from the port of New York on her said voyage, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and twenty-seven;

and thereafterwards, in the course of said voyage, to wit, on the high seas, on the first day of January, in the year of our Lord one thousand eight hundred and twenty eight, and at divers times between that period and the first day of February, in the year of our Lord one thousand eight hundred and thirty, a large amount and quantity of oil, to wit, the quantity of two thousand barrels of oil, was procured, made, and taken on board said ship, in lieu of outfits, and thereafterwards, subsequent to the decease of said Thomas, but during the continuance of the risks of said policy mentioned and thereby insured against, and while the said ship was pursuing her said voyage, to wit, on the Pacific Ocean, on the first day of January, in the year of our Lord one thousand eight hundred and twenty-nine, the said ship was, by the violence of the winds and waves, and other perils of the sea, greatly strained, damaged, and injured, and compelled to put into the port of Honolulu, in the island of Oahee, and necessarily did put into said port for repairs; and thereafterwards, to wit, on the same day, the said ship was duly surveyed and examined, and found to be, and was unworthy of repair, and incapable of being fitted for sea, and was totally lost to the plaintiff. And the plaintiff avers that no vessel could then and there be procured to convey the said oil to the United States. And for the preservation of said oil, and to forward the same in a direction towards the United States, the said oil was then and there shipped on board the brig Andes, bound to the port of London, in Great Britain. And the plaintiff avers that said Andes, with said oil so laden on board, sailed on her said voyage thereafterwards, to wit, on the nineteenth day of March, in the year of our Lord one thousand eight hundred and thirty, and while pursuing her said voyage and course towards the United States on the high seas, heretofore, to wit, on the eleventh day of May thence next ensuing, and on divers other days and times between that day and the fifth day of July immediately subsequent, and during the continuance of the risks and perils in said policy mentioned, and thereby insured against, by the violence of the winds, waves, storms and tempests, and by the excessive rolling and laboring of said vessel, and other perils of the sea, the casks containing said oil were started from their places, and greatly strained, dented, shattered, and destroyed, and a large quantity contained therein, to wit, ten thousand gallons of oil, were, by means thereof, lost by leakage, wasted and spoiled, whereby the estate of said Thomas, and the said plaintiff in his capacity aforesaid, sustained an average loss or damage on said outfits and oil, to a larger amount than five dollars per hundred dollars on all the money insured thereon, to wit, to the amount of sixty dollars by the hundred for each and every hundred dollars insured thereon by said company, to wit, at said Boston; whereby, according to the tenor and effect of said policy, said company became liable to pay a rateable part of said loss, to wit, the sum of thirty-six hundred dollars, and thereafterwards, to wit, on the first day of August then next ensuing, the said brig Andes and her outfits and oil laden on board, while pursuing her said voyage on the high seas, and during the continuance of the perils assured against in said policy, were, by the dangers of the sea, totally lost. Of all which said premises, the said company afterwards, to wit, at said Boston, on the twenty third day of November last past, had notice and proof; and although the said Thomas during his life time, and, since his decease, the said Samuel, have done and performed all things on the part of said Thomas by the said policy required to be done and performed, and although more than sixty days have elapsed since said notice and proof,

yet the said company have not paid said sum of three thousand six hundred dollars, or any part thereof, to the said Thomas, or, since his decease, to the said Samuel, but neglect and refuse so to do. From said May term, 1831, the cause was continued by consent of parties, to the October term, 1831, and thence, by order of court, to the May term, A. D. 1832, and thence to this October term, A. D. 1832. And now the said New England Marine Insurance Company, by Charles G. Loring, their attorney, come into court, and for plea say that they never promised in manner and form as the plaintiff has thereof declared against them, and of this they put themselves on the country. And the said plaintiff, by William Sullivan, his attorney, doth the like.

Pleas.

Issue being thus joined, the cause, after a full hearing, is committed to a jury sworn according to law to try the same, who, after having all matters and things concerning the same, return their verdict therein upon oath, that is to say, the jury find that the defendants never promised in manner and form as the plaintiff has declared against them.

Verdict.

It is therefore considered by the court that the said plaintiff take nothing by his said writ, and that the said New England Marine Insurance Company recover against the said Samuel Hazard, administrator as aforesaid, cost of suit, taxed at .

Judgment.

Bill of Exceptions.

SAMUEL HAZARD, Administrator,
versus
The NEW ENGLAND MARINE INSURANCE COMPANY.

Be it remembered that, at a circuit court of the United States for the first circuit, holden at Boston, within and for the district of Massachusetts, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and thirty-two, by the honorable Joseph Story, esquire, associate justice of the Supreme Court of the United States, and the honorable John Davis, esquire, judge of the district court of the United States for said district: Samuel Hazard of the city, county, and State of New York, merchant, citizen of said State of New York, administrator with the will annexed, in and for the Commonwealth of Massachusetts, of the goods and estate of Thomas Hazard, junior, late of said city of New York, merchant, deceased, in a plea of trespass on the case, impleaded the New England Marine Insurance Company, a corporation established and transacting in the city of Boston, in the county of Suffolk, in the district of Massachusetts, all the corporators whereof are citizens of Massachusetts, in a plea of trespass on the case, and which action was commenced for the term of said court, holden on the fifteenth day of May, in the year of our Lord one thousand eight hundred and thirty-one, the writ therein now remaining on file, bearing date the thirtieth day of March, in the same year, (1831) and duly served on the defendants on the fifteenth day of April next following, which plea is as follows, viz. For, that the said Thomas Hazard, junior, by Josiah Bradlee and George B. Carey, both of said Boston, merchants and co-partners, jointly transacting business under the firm and style of Joseph Bradlee and Company, agents of the said Thomas Hazard, junior, in this behalf, at said Boston, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, according to the usage

and customs of merchants, caused to made a certain writing, commonly called a policy of insurance, in the words and figures following, to wit:

By the New England Marine Insurance Company.

This policy of insurance witnesseth, that the president and directors of the New England Marine Insurance Company do, by these presents, caused to be assured, lost or not loss, Josiah Bradlee and Company, for Thomas Hazard, junior, of New York, fifteen thousand dollars on the ship Dawn and outfits, at and from New York to the Pacific Ocean and elsewhere, on a whaling voyage, during her stay and fishing, and until her return to New York, or port of discharge, in the United States, with liberty to touch at any places for refreshments, and also with liberty to ship home oil in any vessel, without prejudice to this policy. Oil, when on board, to be in lieu of outfits, and valued at 60 cents per gallon, whereof is master for this present voyage Henry Gardner, or whosoever else shall be master in the said vessel, or by whatsoever other name or names the said vessel or master thereof, is, or shall be named or called; beginning the adventure upon the said , as aforesaid, and to continue during the voyage aforesaid on the vessel, until she shall be arrived and moored at anchor twenty-four hours in safety, and on the property until landed.

And it shall be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather, or other unavoidable accidents, without prejudice to this insurance.

Touching the adventures and perils which the said Insurance Company are contented to bear and take upon them in this voyage, they are, of the seas, fire, enemies, pirates, assailing thieves, restraints and detainments of all kings, princes or people, of what nation or quality soever, barratry of the master, (unless the insured be owners of the vessel,) and of mariners and all other losses and misfortunes which have, or shall come to the damage of the said vessel, &c., or any part thereof, to which insurers are liable by the rules and customs of insurance in Boston: provided, that the insurers shall not be liable for any partial loss on hemp and flax, unless the loss amount to twenty per cent. on the whole aggregate value of such articles; nor for any partial loss on sugar, flaxseed, bread, tobacco, and rice, unless the loss amount to seven per cent. on the whole aggregate value of such articles; nor for any partial loss on salt, grain, fish, fruit, hides, skins, or other goods that are esteemed perishable in their own nature, unless it amount to seven per cent. on the whole aggregate value of such articles, and happen by stranding; nor for any partial loss on other goods, or on the vessel or freight, unless it amount to five per cent. exclusive, in each case, of all charges and expenses incurred for the purpose of ascertaining and proving the loss, but the owners of such goods shall recover on a general average. And in case of any loss or misfortune, it shall be lawful for the insured, their factors, servants, and assigns, to sue, labor and travel for, in and about the defence, safeguard, and recovery of the said vessel, &c., or any part thereof, without prejudice to this insurance, to the charges whereof the said insurance company will contribute in proportion as the sum insured is to the whole sum at risk. And so the president and directors aforesaid are contented, and do hereby bind the capital stock and other common property of the said insurance company, to the insured, executors, administrators and assigns, for the true performance of the pre-

mises, confessing themselves paid the consideration due unto them for this insurance by the insured, at and after the rate of eight per cent.

And it is hereby agreed, that if the insured shall have made any other insurance upon the vessel, &c., aforesaid, prior in date to this policy, then the said insurance company shall be answerable only for so much as the amount of such prior insurance may be deficient towards fully covering the property at risk, whether for the whole voyage, or from one port of lading or discharge to another; and the said insurance company shall return the premium, or a rateable part thereof, upon so much of the sum by them insured, or for such part of the voyage, as they shall be exonerated from by such prior insurance, provided that no return premium shall be made for any passage whereon the risk has once commenced.

Sum insured $15,000.

And in case of any insurance upon the said vessel, &c, whether it be for the whole or part of the voyage, subsequent in date to this policy, the said insurance company shall nevertheless be answerable to the full extent of the sum by them herein insured, without right to claim contribution from subsequent insurers; and shall accordingly be entitled to retain the premium by them received, in the same manner as if no subsequent insurance had been made. And in case of loss, such loss shall be paid in sixty days after proof and adjustment thereof, the amount of the premium note, if unpaid, and all sums due to the company, from the insured, when such loss becomes due, being first deducted, and all sums coming due being first paid or secured to the satisfaction of the said president and directors, they discounting interest for anticipating payment It is also agreed that, in case of capture or detention, the insured shall not have the right to abandon therefor, until proof is exhibited of condemnation, or of the continuance of the detention (by capture or other arrest) for at least ninety days; and that the insured shall not abandon, in consequence of the port of destnation being blockaded, but the vessel shall, in such case, have liberty to proceed to another port not blockaded, and there end the voyage, or wait a reasonable time for the blockade of the original port of destination to be raised; and that the acts of the insured or insurers, in recovering, saving, and preserving the property insured in case of disaster, shall not be considered a waiver or acceptance of an abandonment. It is also agreed that the insurers shall not be answerable for any charge, damage, or loss, which may arise in consequence of seizure or detention for, or on account of, illicit or prohibited trade, or trade in articles contraband of war; but the judgment of a foreign consular or colonial court shall not be conclusive upon the parties as to the fact of there having been articles contraband of war on board, or as to the fact of an attempt to trade in violation of the laws of nations.

Vessel valued at $15,000.

Premium included.

And outfits $10,000 each, subject to its own average.

Premium $1,200
Policy 01
$1,201

It is also agreed that this policy shall be void, in case of its being assigned, transferred, or pleged, without the previous consent in writing of the insurers. It is also agreed that the insured shall not have the right to abandon the vessel for the amount of damage merely, unless the amount which the insurers would be liable to pay, under an adjustment as of a partial loss, shall exceed half the amount insured; and in case of a total loss of the vessel with salvage, the amount allowed out of the salvage to the officers and crew for wages earned, or services rendered previously to the loss, shall be considered as so much of the salvage applied to the use of the ship-owners, even although the

same shall be allowed or paid under the name of salvage, and not as wages, and shall accordingly be deducted in adjusting the loss. It is further agreed that, if any dispute shall arise relating to a loss on this policy, it shall be submitted to the judgment and determination of arbitrators mutually chosen, whose award in writing shall be conclusive and binding on all parties. The company is not liable for wages or provisions, except in general average. In witness whereof, the president of the N. E. M. Ins. Co. hath hereunto subscribed his name, and caused the same to be countersigned by their secretary, at their office in Boston, this twenty-sixth day of December, one thousand eight hundred and twenty-seven. James Hall, president, John Waters, secretary, and the plaintiff avers that the said policy of insurance so made by the said Bradlee and Carey, the agents of the said Thomas Hazard, junior, in this behalf, was made for the use and benefit of the said Thomas. Of which policy of insurance made as above set forth, the said compay had notice on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven; and thereupon, thereafterwards, on the same day, in consideration that the said Thomas, by his agents in this behalf, the said Bradlee and Carey, had paid the said company the sum of twelve hundred dollars as a premium for the assurance of fifteen thousand dollars on the ship Dawn and her outfits, in said policy of insurance mentioned, and valued at the sums therein severally set forth, and had promised to perform all things contained in the said policy of insurance, on his, the said Thomas Hazard, junior's, part, to be performed, the said company promised the said Thomas that they would become, and they then and there did become owners of the said vessel and outfits, and oil in the lieu of outfits, for the period aforesaid, according to the tenor and effect of the policy of insurance aforesaid, for the said sum of fifteen thousand dollars to be assured according to said policy. In witness whereof, they caused the said policy to be signed by their president, and countersigned by their secretary. And the plaintiff further says that the said Thomas was then and there, and continually afterwards until his decease, interested in said ship, outfits, and oil in lieu of outfits, to a large value and amount, to wit, to the value and amount of all the moneys by him ever assured thereon, to wit, at said Boston, and since his decease the said Samuel, in his said capacity, has continued so interested therein, until and at the time of the loss hereinafter mentioned. And the plaintiff further says that the said ship Dawn, with her outfits on board, sailed from said port of New York on her said voyage, on the thirtieth day of December, in the year last above mentioned, and in the course of her voyage, and on the high seas, took on board, and made from whales a large quantity of oil in lieu of outfits, to wit, three thousand barrels, of oil, and that afterwards, to wit, on the first day of February, in the year of our Lord one thousand eight hundred and thirty, and subsequent to the decease of said Thomas, but during the continuance of the risks and perils in said policy of insurance mentioned, and thereby insured against, the said ship Dawn and her outfits, and oil on board, were by the perils and dangers of the sea totally lost, and never did arrive at said port of New York, or any port of discharge in the United States, to wit, at said Boston, of all which the said company, on the twenty-third day of November now last past, had notice and proof; and although the said Thomas, during his lifetime, and the said Samuel since the decease of the said Thomas, have done and performed all things on the part of the said Thomas by virtue of said policy, required to be done and performed; and although sixty days have elapsed since said notice and proof, yet the said company have not paid the said Thomas

in his life time, nor the said Samuel since his decease, the aforesaid sum of fifteen thousand dollars, or any part thereof, but neglect and refuse so to do. And, also, for that the said Thomas, at said Boston, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, by the said Bradlee and Carey, his agents in this behalf, according to the usuage and custom of merchants, caused to be made a certain other policy of insurance in the same words and figures with that herein before set forth, which said policy the plaintiff avers was so made for the use and benefit of the said Thomas; of which policy of insurance so made, the said company afterwards, to wit, on the said twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, at said Boston, had notice, and thereupon, thereafterwards, on the same day, in consideration that the said Thomas had paid to the said company the sum of twelve hundred dollars as premium for the assurance of fifteen thousand dollars on the said ship Dawn and her outfits, and oil in lieu of outfits, valued at the sums severally set forth in said policy of insurance, and had promised to perform all things on his, the said Thomas's, part to be performed, the said company promised the said Thomas that they would become, and they then and there did become the assurers of the said vessel and her outfits, and oil in lieu of outfits, for the period mentioned in said policy of insurance last named, according to the tenor and effect of said last named policy, for the said sum of fifteen thouand dollars, to be assured according to the said policy.

In witness whereof, they caused the said last named policy of insurance to be signed by their president, and countersigned by their secretary. And the said plaintiff further says that the said Thomas was then and there, and continually afterwards, until his decease, interested in said ship Dawn and her outfits and oil, to a large amount and value, to wit, to the amount and value of all the sums so caused by the said Thomas to be insured thereon, to wit, at said Boston, and the said Samuel, in his said capacity, continued so interested therein until the loss hereinafter mentioned. And the plaintiff further says, that heretofore, to wit, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, the said ship Dawn, with her outfits laden on board, sailed from the port of New York on her said voyage, and thereafterwards, in the course of said voyage, to wit, on the high seas, on the first day of January, in the year of our Lord one thousand eight hundred and twenty-eight, and at divers times between that period and the first day of February, in the year of our Lord one thousand eight hundred and thirty, a large amount and quantity of oil, to wit, the quantity of three thousand barrels of oil, was procured, made, and taken on board said ship in lieu of outfits; and thereafterwards, during the continuance of the said risks in said policy mentioned, and thereby insured against, and while the said ship was pursuing her said voyage, subsequent to the decease of said Thomas, to wit, in the Pacific ocean, to wit, on the first day of February, in the year of our Lord one thousand eight hundred and thirty, she was, by the perils and dangers of the sea, and by stormy and tempestuous weather, and the violence of the winds and waves, strained and broken, damaged, spoiled, and destroyed; and the said ship, with said outfits and oil so on board thereof as aforesaid, thereby then and there become, and were wholly lost to the plaintiff, to wit, at said Boston, in the day and year last aforesaid; and the said ship, outfits, and oil, never did arrive at said port of New York, or any other port of dis-

charge in the United States. Of all which the said company thereafterwards, to wit, on the twenty-third day of November last past, had notice and proof, and although the said Thomas, during his lifetime, and the said Samuel since his decease, have done and performed all things on the part of the said Thomas by virtue of said policy to be done and performed, and although sixty days have elapsed since said notice and proof, yet the said company have not paid the said Thomas in his life time, nor the said Samuel since his decease, the aforesaid sum of fifteen thousand dollars, or any part thereof, but neglect and refuse so to do. 3d. And also, for that the said Thomas, at said Boston, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, according to the usage and custom of merchants, by the said Bradlee and Carey, his agents in this behalf, caused to be made a certain other policy of insurance, in the same words and figures with that hereinbefore set forth, which said policy the plaintiff avers was so made for the use and benefit of the said Thomas, of which policy of insurance so made, the said company thereafterwards, to wit, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, had notice; and thereupon, thereafterwards, on the same day, in consideration that the said Thomas had paid to the said company the sum of twelve hundred dollars as premium for the assurance of fifteen thousand dollars on the said ship Dawn and her outfits, and oil in lieu of outfits, valued at the sums severally set forth in said policy and mentioned therein, and had promised to perform all things therein mentioned on his, the said Thomas's part, to be performed, the said company promised the said Thomas that they would become, and they then and there did become assurers of the said vessel and her outfits, and oil in lieu of outfits, for the period mentioned in said policy of insurance last named, according to the tenor and effect of said last named policy, for the said sum of fifteen thousand dollars, to be assured according to the said policy. In witness wereof, they caused said last named policy to be signed by their president, and countersigned by their secretary.

And the plaintiff further says that the said Thomas was then and there, and continually afterwards until his decease, interested in said ship and outfits, and oil in lieu of outfits, to a large value and amount, to wit, to the value and amount of all the moneys by him ever insured thereon, to wit, at said Boston; and since his decease, the said Samuel, administrator as aforesaid, has continued so interested therein, until and at the time of the loss hereinafter mentioned.

And the plaintiff further says, that the said ship Dawn, with her outfits laden on board, sailed from the port of New York on her said voyage, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and twenty-seven; and thereafterwards, in the course of said voyage, to wit, on the high seas, on the first day of January, in the year of our Lord one thousand eight hundred and twenty-eight, and at divers times between that period and the first day of February, in the year of our Lord one thousand eight hundred and thirty, a large amount and quantity of oil, to wit, the quantity of three thousand barrels of oil, was procured, made, and taken on board said ship in lieu of outfits; and thereafterwards, subsequent to the decease of said Thomas, but during the continuance of the risks in said policy mentioned, and thereby insured against, and while the said ship was pursuing said voyage, to wit, on the high seas, she was greatly weakened and damaged, and destroyed by worms, and by and through

the force of certain hurricanes, and by and through the force and violence of certain gales of wind, and stormy and tempestuous weather, and by and through the perils and danger of the sea, the said ship sprung a leak, and became greatly damaged, insomuch that, by means thereof, the said ship was forced and obliged to, and did put into the port of Honololu, in the island of Oahoo, where the said ship and her said outfits and oil on board, by the risks and perils of the sea aforesaid, were totally lost, to wit, on the first day of February, in the year of our Lord one thousand eight hundred and thirty. Of all which the said company, on the first day of December now last past had notice and proof; and although the said Thomas, in his lifetime, and the said Samuel since the decease of the said Thomas, have done and performed all things on the part of said Thomas to be done and performed by virtue of said policy, and although sixty days have elapsed since said notice and proof, yet the said company have not paid the said Thomas in his lifetime, nor, since his decease, the said Samuel, the aforesaid sum of fifteen thousand dollars, or any part thereof, but neglect and refuse so to do.

4th. And also, for that the said Thomas, at said Boston, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, by the said Bradlee and Carey, his agents in this behalf, according to the usage and custom of merchants, caused to be made a certain other policy of insurance in the same words and figures with that herein before set forth; which said policy, the plaintiff avers was so made for the use and benefit of the said Thomas. Of which policy of insurance, so made, the said company afterwards, to wit, on the twenty-sixth day of December, in the year of our Lord ond thousand eight hundred and twenty-seven, had notice; and, thereupon, thereafterwards, on the same day, in consideration that the said Thomas, by his said agents. had paid to the said company the sum of twelve hundred dollars as premium for the assurance of fifteen thousand dollars on the said ship Dawn, and her outfits, and oil in lieu of outfits, valued at the sums severally set forth in said last named policy, and had promised to perform all things on his, the said Thomas's part, to be performed, the said company promised the said Thomas that they would become, and they, and there did become assurers of the said vessel and outfits, and oil in the lieu of outfits, for the period aforesaid, according to the tenor and effect of the policy of insurance aforesaid, for the said sum of fifteen thousand dollars, to be assured according to the said policy. In witness whereof, they caused the said policy to be signed by their president, and countersigned by their secretary.

And the plaintiff further says that the said Thomas was then and there, and continually afterwards until his decease, interested in said ship and outfits, and oil in lieu of outfits, to a large value and amount, to wit, to the value and amount of all moneys by him ever insured thereon, to wit, at said Boston; and, since his decease, the said Samuel, administrator as aforesaid, has continued so interested therein until, and at the time of the loss hereinafter mentioned. And the plaintiff further says that the said ship Dawn, with her outfits laden on board, sailed from the port of New York, on her said voyage, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, and thereafterwards, in the course of said voyage, to wit, on the high seas, on the first day of January, in the year of our Lord one thousand eight hundred and twenty-eight, and at divers times between that period and the first day of February, in the year of our Lord one thousand eight hundred and thirty, a large amount and quantity of oil, to wit, the quantity of three thousand barrels of oil, was procured,

made, and taken on board said ship in lieu of outfits. And the plaintiff further says that, at the time when said policy of insurance was made, and, when she sailed on said voyage, she was well and sufficiently secured and protected by good and sufficient sheathing of copper, leather, and other proper materials, against worms and such like destructive insects in the sea, of all which the said company had notice at the time of making said policy. And while the said ship was pursuing her said voyage, subsequent to the decease of said Thomas, but during the continuance of the risks of said policy mentioned, and thereby insured against, the said sheathing was so abraded and torn off from said vessel, by and through the perils of the sea, and by striking upon hidden rocks, and by the violence of the winds and waves, that the keel and stern, and certain other parts of said vessel, became thereby exposed to be, and were greatly eaten, corroded, and damaged by the worms; and thereby, by the force of certain hurricanes of wind, and strong and tempestuous weather, and perils of the sea, the said vessel was greatly broken and damaged, and rendered of no use or value to the owner, and, with her said outfits and oil, was, subsequent to the decease of said Thomas, and during the continuance of the risks in said policy mentioned, and thereby insured against, and by means of the perils and dangers aforesaid totally lost, to wit, at said Boston, on the first day of February, in the year of our Lord one thousand eight hundred and thirty. Of all which the said company, on the first day of December now last past, had notice and proof; and although the said Thomas in his life time, and, since his decease, the said Samuel, have done and performed all things on the part of the said Thomas, required to be done and performed by virtue of said policy, and although sixty days have elapsed since said notice and proof, yet the said company have not paid said sum of fifteen thousand dollars, or any part thereof, to the said Thomas in his life time, or since his decease to the said Samuel, but neglect and refuse so to do.

5th. And also, for that the said Thomas, at said Boston, on the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, by the said Bradlee and Carey, his agents in this behalf, according to the usage and custom of merchants, caused to be made a certain other policy of insurance in the same words and figures with that hereinbefore set forth; which said policy the plaintiff avers was so made for the use and benefit of the said Thomas. Of which policy of insurance so made, the said company afterwards, to wit, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, at said Boston, had notice: thereupon, thereafterwards, on the same day, in consideration that the said Thomas had paid to the said company the sum of twelve hundred dollars as premium for the assurance of fifteen thousand dollars on the ship Dawn and her outfits, and oil in lieu of outfits, in said last named policy mentioned, and promised to perform all things in said policy mentioned on the part of the said Thomas to be performed, the said company promised the said Thomas that they would become, and they, and there did become, assurers of the said vessel, and her outfits and oil, for the period mentioned in said policy last named, according to the tenor and effect of said last named policy, for the sum of fifteen thousand dollars, to be assured according to said policy. In witness whereof, they caused said last named policy to be signed by their president, and countersigned by their secretary.

And the plaintiff further says that the said Thomas was then and there, and continually afterwards, until his decease, interested in said ship and outfits, and oil in lieu of outfits, to a large value and amount, to wit, to the value and amount of all the moneys by him ever insured thereon, to wit, at said Boston, and since his decease, the said Samuel, administrator as aforesaid, has continued so interested therein, until and at the time of the loss hereinafter mentioned. And the plaintiff further says that the said ship Dawn, with her outfits laden on board, sailed from the port of New York, on her said voyage, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and twenty-seven; and thereafterwards, in the course of said voyage, to wit, on the high seas, on the first day of January, in the year of our Lord one thousand eight hundred and twenth-eight, and at divers times between that period and the first day of February, in the year of our Lord one thousand eight hundred and thirty, a large amount and quantity of oil, to wit, a quantity of three thousand barrels of oil was procured, made, and taken on board said ship in lieu of outfits; and thereafterwards, subsequent to the decease of said Thomas, but during the continuance of the risks of said policy mentioned, and thereby insured against, and while the said ship was pursuing her said voyage on the high seas, by striking on hidden rocks, and by tempestuous weather, and by the violence of the winds and waves, and perils of the sea, the said ship was greatly broken, damaged, and strained, and rendered of no value, and with her outfits and oil on board, was thereby totally lost, to wit, at said Boston, on the day and year last above named. Of all which the said company, to wit, at said Boston, on the twenty-third day of November, in the year of our Lord one thousand eight hundred and thirty, had notice and proof, and, although the said Thomas, in his life time, and, since the decease of said Thomas, the said Samuel have done and performed all things on the part of said Thomas by said policy required to be done and performed, and, although sixty days have elapsed since said notice and proof, yet the said company have not paid the said sum of fifteen thousand dollars, or any part thereof, to the said Thomas in his life time, nor since his decease, to the said Samuel, but neglect and refuse so to do.

6th. And, also, for that the said Thomas, by Josiah Bradlee and George B. Carey, both of said Boston, joint traders under the firm and style of Josiah Bradlee and Company, agents of the said Thomas in this behalf, at said Boston, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, according to the usage of merchants, caused to be made a certain other writing, usually called a policy of insurance, in the words and figures following, to wit:

No. *By the New England Marine Insurance Company.*

This policy of insurance witnesseth, that the President and Directors of the New England Marine Insurance Company, in the city of Boston, do, by these presents, cause to be insured, lost or not lost, fifteen thousand dollars on the ship Dawn, and outfits at and from New York to the Pacific ocean, and elsewhere, on a whaling voyage, during her stay and fishing, and until her return to New York, or port of discharge in the United States, with liberty to touch at any places for refreshments, and also with liberty to ship home oil in any vessel without prejudice to this policy, oil when on board to be in lieu of outfits, and valued at 60 cents per gallon; whereof, is

Sum insured $15,000.

master, for this present voyage, Henry Gardner, or whosoever else shall be master in the said vessel, or by whatsoever other name or names the said vessel or master thereof is, or shall be named or called: beginning the adventure upon the said as aforesaid, and to continue during the voyage aforesaid, on the vessel, until she shall be arrived and moored at anchor twenty-four hours in safety, and on the property until landed.

Outfits valued at $10,000.

And it shall be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather, or other unavoidable accidents, without prejudice to this insurance. Touching the adventures and perils which said Insurance Company are contented to bear, and take upon them in this voyage, they are, of the seas, fire, enemies, pirates, assailing thieves, restraints, and detainments of all kings, princes, or people, of what nation or quality soever, barratry of the master, (unless the insured be owner of the vessel,) and of mariners, and all other losses and misfortunes which have or shall come to the damage of the said vessel, &c., or any part thereof, to which insurers are liable by the rules and customs of insurance in Boston: provided, that the insurers shall not be liable for any partial loss on hemp and flax,

Vessel valued at $15,000, premium included--each subject to its own average.

unless the loss amount to twenty per cent. on the whole aggregate value of such articles; nor for any partial loss on sugar, flaxseed, bread, tobacco, and rice, unless the loss amount to seven per cent. on the whole aggregate value of such articles; nor for any partial loss on salt, grain, fish, fruit, hides, skins, or other goods that are esteemed perishable in their own nature, unless it amount to seven per cent. on the whole aggregate value of such articles, and happen by stranding; nor for any partial loss on other goods, or on the vessel or freight, unless it amount to five per cent. exclusive, in each case, of all charges and expenses incurred for the purpose of ascertaining and proving the loss; but the owners of such goods shall recover on a general average. And in case of any loss or misfortune, it shall be lawful for the insured, their factors, servants, and assigns, to sue, labor, and travel for, in and about the defence, safeguard, and recovery of the said vessel, &c., or any part thereof, without prejudice to this insurance, to the charges whereof the said Insurance Company will contribute, in proportion as the sum insured is to the whole sum at risk. And so the president and directors aforesaid are contented, and do hereby bind the capital, stock, and other common property of the said Insurance Company, to the insured, their executors, administrators, and assigns, for the true performance of the premises, confessing themselves paid the consideration due unto them for this insurance by the insured, at and after the rate of eight per cent. And it is hereby agreed that, if the insured shall have made any other assurance upon the vessel, &c., aforesaid, prior in date to this policy, then the said Insurance Company shall be answerable only for so much as the amount of such prior insurance may be deficient towards fully covering the property at risk, whether for the whole voyage, or from one port of lading or discharge to another; and the said Insurance Company shall return the premium, or a rateable part thereof, upon so much of the sum by them insured, or for such part of the voyage as they shall be exonerated from by such prior insurance: provided, that no return premium shall be made for any passage whereon the risk has once commenced. And in case of any

Premium.	
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insurance upon the said , whether it be for the whole or part of the voyage subsequent in date to this policy, the said Insurance Company shall, nevertheless, be answerable to the full extent of the sum by them herein insured, without right to claim contribution from such subsequent insurers; and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent insurance had been made. And in case of loss, such loss shall be paid in sixty days after proof and adjustment thereof, the amount of the premium note, if unpaid, and all sums due to the company from the insured, when such loss becomes due, being first deducted, and all sums coming due being first paid or secured to the satisfaction of the said president and directors, they discounting interest for anticipating payment. It is also agreed that, in case of capture or detention, the insured shall not have the right to abandon therefor, until proof is exhibited of condemnation, or of the continuance of the detention, (by capture or other arrest,) for at least ninety days; and that the insured shall not abandon in consequence of the port of destination being blockaded, but the vessel shall, in such case, have liberty to proceed to another port not blockaded, and there end the voyage, or wait a reasonable time for the blockade of the original port of destination to be raised; and that the acts of the insured or insurers in recovering, saving, and preserving the property insured in case of disaster, shall not be considered a waiver or acceptance of an abandonment. It is also agreed, that the insurers shall not be answerable for any charge, damage, or loss, which may arise in consequence of seizure or detention, for, or on account of, illicit or prohibited trade, or trade in articles contraband of war; but the judgment of a foreign consular, or colonial court shall not be conclusive upon the parties as to the fact of there having been articles contraband of war on board, or as to the fact of an attempt to trade in violation of the laws of nations. It is also agreed, that this policy shall be void in case of its being assigned, transferred, or pledged, without the previous consent in writing of the insurers. It is also agreed that the insured shall not have the right to abandon the vessel for the amount of damage merely, unless the amount which the insurers would be liable to pay under an adjustment as of a partial loss shall exceed half the amount insured, and in case of a total loss of the vessel with salvage, the amount allowed out of the salvage to the officers and crew for wages earned, or services rendered previously to the loss, shall be considered as so much of the salvage applied to the use of the ship owners, even although the same should be allowed or paid under the name of salvage, and not as wages, and shall accordingly be deducted in adjusting the loss. It is further agreed, that if any dispute shall arise relating to a loss on this policy, it shall be submitted to the judgment and determination of arbitrators mutually chosen, whose award in writing shall be conclusive and binding on all parties. The company is not liable for wages or provisions, except in general average. In witness whereof, the President of the said N. E. M. Insurance Compauy hath hereunto subscribed his name, and caused the same to be countersigned by their secretary, at their office in Boston, this twenty-sixth day of December, one thousand eight hundred and twenty-seven

JAMES HALL, *President.*

JOHN WATERS, *Secretary.*

Which said policy the plaintiff avers was so made for the use and benefit of the said Thomas. Of which policy of insurance, so made, the said com-

pany afterwards, to wit, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, at said Boston, had notice; and thereupon, thereafterwards, on the same day, in consideration that the said Thomas, by his said agents, had paid to the said company the sum of twelve hundred dollars as premium for the assurance of fifteen thousand dollars on the said ship Dawn and her outfits, and oil in lieu of outfits, valued at the sums severally set forth in said last named policy, and had promised to perform all things on his, the said Thomas's, part to be performed, the said company promised the said Thomas that they would become, and they then and there did become, assurers of the said vessel and outfits, and oil in lieu of outfits, for the period aforesaid, according to the tenor and effect of the said policy, for the said sum of fifteen thousand dollars, to be assured according to said policy : in witness whereof, they caused the said policy to be signed by their president, and countersigned by their secretary. And the plaintiff further says that the said Thomas was then and there, and, continually afterwards until his decease, interested in said ship and outfits, and oil in lieu of outfits, to a large value and amount, to wit, to the value and amount of all the moneys by him ever insured thereon, to wit, at said Boston, and, since his decease, the said Samuel, administrator as aforesaid, has continued so interested therein until and at the time of the loss hereinafter mentioned. And the plaintiff further says that the said ship Dawn, with her outfits laden on board, sailed from the port of New York on said voyage, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and twenty-seven; and thereafterwards, in the course of said voyage, to wit, on the high seas, on the first day of January, in the year of our Lord one thousand eight hundred and twenty-eight, and at divers times between that period and the first day of February, in the year of our Lord one thousand eight hundred and thirty, a large amount and quantity of oil, to wit, the quantity of three thousand barrels of oil, was procured, made, and taken on board said ship in lieu of outfits; and thereafterwards, subsequent to the decease of the said Thomas, but during the continuance of the risks in said policy mentioned and thereby insured against, and while the said ship was pursuing her said voyage on the high seas, with said outfits and oil on board, to wit, on the coast of Japan, on the thirteenth day of September, in the year of our Lord one thousand eight hundred and twenty-nine, by the violence of the winds and waves, storms and tempests, and by the rolling and laboring of said ship, and the sea water which came on board and into said ship, and other perils of the sea, the said outfits and oil on board the said ship Dawn were greatly wasted, spoiled, damaged, and carried away and destroyed, whereby the said plaintiff sustained a partial damage and loss on the said outfits and oil on board to a larger amount than five dollars the hundred for each and every hundred dollars insured thereon by the said Thomas, to wit, at Boston aforesaid; and thereafterwards, on the same day, by the force and violence of the winds and waves, boisterous and tempestuous weather, and other perils and dangers of the sea, the said ship was greatly strained, broken and damaged, and sprung a leak, insomuch that, by means thereof, the said ship was forced and obliged to put into the port of Honolulu, where, afterwards, to wit, on the first day of February, in the year of our Lord one thousand eight hundred and thirty, the said ship and her outfits and oil on board, by the dangers and perils of the sea aforesaid, and the violence of the winds and waves, were totally lost, and become of no value to the

plaintiff, administrator as aforesaid. Of all which said premises the said company afterwards, to wit, at said Boston, on the twenty-third day of November last, had notice and proof; and although the said Thomas in his lifetime, and, since his decease, the said Samuel, have done and performed all things on the part of said Thomas by said policy required to be done and performed, and although sixty days have long since elapsed since said notice and proof, yet the said company have not paid said sum of six hundred dollars, or any part thereof, to the said Thomas during his lifetime, nor since his decease to the said Samuel, but neglect and refuse so to do.

9th. And, also, for that the said Thomas, by Josiah Bradlee and George B. Carey, agents of the said Thomas in this behalf, at said Boston, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, according to the usage and custom of merchants, caused to be made a certain other writing, usually called a policy of insurance, in the same words and figures with that set forth in the last preceding count, which said policy the plaintiff avers was so made for the use and benefit of the said Thomas; of which policy so made the said company thereafterwards, to wit, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty seven, at said Boston, had notice, and thereupon, thereafterwards, on the same day, in consideration that the said Thomas had paid to the said company the sum of twelve hundred dollars as premium for the assurance of fifteen thousand dollars on the said ship Dawn and her outfits and oil in said last named policy mentioned, and valued at the sums therein severally set forth, and had promised to perform all things in said policy mentioned on the part of said Thomas to be performed, the said company promised the said Thomas that they would become, and they then and there did become, assurers of the said vessel and her outfits, and oil in lieu of outfits, for the period mentioned in said policy last named, according to the tenor and effect of said last named policy, for the sum of fifteen thousand dollars, to be assured according to the said policy: in witness whereof, they caused the said policy to be signed by their president, and countersigned by their secretary. And the said plaintiff further says that the said Thomas was then and there, and continually afterwards until his decease, interested in said ship and outfits, and oil in lieu of outfits, to a large value and amount, to wit, to the value and amount of all the moneys by him ever insured thereon, to wit, at said Boston, and since his decease the said Samuel, administrator as aforesaid, has continued so interested therein until and at the time of the loss hereinafter mentioned. And the plaintiff further says that the ship Dawn, with her outfits laden on board, sailed from the port of New York, on her said voyage, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and twenty-seven; and thereafterwards, in the course of said voyage, to wit, on the high seas, on the first day of January, in the year of our Lord one thousand eight hundred and twenty-eight, and at divers times between that period and the first day of February, in the year of our Lord one thousand eight hundred and thirty, a large amount and quantity of oil, to wit, the quantity of three thousand barrels of oil, was procured, made, and taken on board said ship in lieu of outfits; and thereafterwards, subsequent to the decease of said Thomas, but during the continuance of the risks of said policy mentioned, and thereby insured against, and while the said ship was pursuing her said voyage, to wit, on the Pacific Ocean, the said Gardiner, master of said ship Dawn, mentioned

in said last named policy, and agent of the said Thomas and Samuel in this behalf, in conformity to the license granted in said policy, shipped a large quantity of oil, to wit, the quantity of two thousand barrels of oil, on board a certain brig called the Andes, bound around Cape Horn, into the Atlantic Ocean, and in a course and direction towards the United States, to wit, on the first day of February, in the year of our Lord one thousand eight hundred and thirty; and the plaintiff avers that said Andes, with said oil so laden on board, sailed on her said voyage thereafterwards, to wit, on the nineteenth day of March, in the year of our Lord one thousand eight hundred and thirty, and while pursuing her said voyage and course towards the United States on the high seas, heretofore, to wit, on the eleventh day of May thence next ensuing, and on divers other days and times between that day and the fifth day of July immediately subsequent, and during the continuance of the risks and perils in said policy mentioned, and thereby insured against, by the violence of the winds, waves, storms, and tempests, and by the excessive rolling and laboring of said vessel, and other perils of the seas, the casks containing said oil were started from their places, and greatly strained, dented, shattered, and destroyed, and a large quantity contained therein, to wit, ten thousand gallons of oil, were by means thereof lost by leakage, wet, and spoiled, whereby the estate of said Thomas and the said plaintiff in his capacity aforesaid, sustained an average loss or damage on said outfits and oil to a larger amount than five dollars per hundred dollars on all the money insured thereon, to wit, to the amount of sixty dollars by the hundred for each and every hundred dollars insured thereon by said company, whereby said company become liable to pay a valuable part of said loss, to wit, the sum of thirty six hundred dollars, according to the tenor and effect of said policy, to wit, at said Boston, and thereafterwards, to wit, on the first day of August then next ensuing, the said ship Dawn and her outfits and oil laden on board, while pursuing her said voyage on the high seas, and during the continuance of the perils assured against in said policy, were by the dangers and perils of the sea totally lost. Of all which said premises the said company afterwards, to wit, at said Boston, on the twenty third day of November last past, had notice and proof; and although the said Thomas during his lifetime, and since his decease the said Samuel, have done and performed all things on the part of said Thomas by said policy required to be done and performed, and although more than sixty days have elapsed since said notice and proof, yet the said company have not paid said sum of three thousand and six hundred dollars, or any part thereof, to the said Thomas, or since his decease to the said Samuel, but neglect and refuse so to do. And also, for that the said company, at said Boston, on the day of the purchase of this writ, being indebted to the said plaintiff, as he is such administrator as aforesaid, on a certain other sum of fifteen thousand dollars, for so much money before that time had and received by the said company, to the use of the plaintiff, as he is administrator as aforesaid, in consideration thereof, then and there promised the plaintiff, administrator as aforesaid, to pay him that sum on demand; yet the said company, although requested, have not paid it, or any part thereof, but neglect and refuse so to do.

And also, for that the said company, at said Boston, on the day of the purchase hereof, being indebted to the said plaintiff, administrator as aforesaid, in the further sum of fifteen thousand dollars, for so much money paid, laid out, and expended by the said plaintiff, administrator as aforesaid,

for the use and benefit of the said company, at their request, in consideration thereof, then and there promised the plaintiff, administrator as aforesaid, to pay him that sum on demand; yet the said company, although requested, have not paid such sum, or any part thereof, but neglect and refuse so to do.

10th. And also, for that the said company, at said Boston, in the lifetime of the said Thomas, being indebted to the said Thomas in the further sum of fifteen thousand dollars, for so much money before that time had and received by the said company to the use of the said Thomas, in consideration thereof, then and there promised the said Thomas to pay him that sum on demand; yet the said company, although requested, have not paid the said sum to the said Thomas in his lifetime, nor to the said Samuel, administrator as aforesaid, since his decease, but neglect and refuse so to do.

11th. And, also, for that the said Thomas, by said Bradlee and Carey, agents of the said Thomas in his behalf, at said Boston, on the twenty sixth day of December, in the year of our Lord one thouand eight hundred and twenty-seven, according to the usuage and custom of merchants, caused to be made a certain other writing, usually called a policy of insurance, in the same words and figures with that set forth in the last preceding count, which said policy, the plaintiff avers, was so made for the use and benefit of the said Thomas. Of which policy so made, the said company thereafterwards, to wit, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, at the said Boston had notice; and thereafterwards, on the same day, in consideration that the said Thomas had paid the said company the sum of twelve hundred dollars as premium for the assurance of fifteen thousand dollars on the said ship Dawn and her outfits, and oil in lieu of outfits, in said last named policy mentioned, and valued at the sums therein severally set forth, and had promised to perform all things in said policy mentioned on the part of said Thomas to be performed, the said company promised the said Thomas that they would become, and they then and there did become assurers of the said vessel and her outfits, and oil in lieu of outfits, for the period mentioned in said policy last named, according to the tenor and effect of said last named policy, for the sum of fifteen thousand dollars, to be assured according to said policy. In witness whereof, they caused the said policy to be signed by their president, and countersigned by their secretary. And the plaintiff further says that the said Thomas was then and there, and continually afterwards until his decease, interested in said ship and outfits, and oil in lieu of outfits, to a large value and amount, to wit, to the value and amount of all the moneys by him ever insured thereon, to wit, at said Boston, and since his decease the said Samuel, administrator as aforesaid, has continued so interested therein until and at the time of the loss hereinafter mentioned. And the plaintiff further says, that heretofore, to wit, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, the said ship Dawn, with her outfits laden on board, sailed from the port of New York, on her said voyage; and thereafterwards, on the high seas, to wit, on the sixteenth day of January thence next ensuing, the said ship, tackle, apparel and furniture thereof, by and through the mere force and violence of certain hurricanes and stormy and tempestuous weather, and the dangers and perils of the seas insured against in and by said policy, were greatly damaged, and a certain quarter boat, of the value of ——— hundred dollars, were stove in pieces and destroyed; and subse-

quently, in the course of said voyage, and during the continuance of said dangers and perils mentioned in said policy, and while the said ship was lying at anchor in the port of Port au Praya, in the Cape de Verd Islands, to wit, on the tenth day of February next ensuing, she was by the force and violence of the winds and waves, and the perils and dangers of the sea, driven from her moorings, whereby a valuable anchor belonging to the same, usually called the starboard anchor, of the value of five hundred dollars, was broken and destroyed, and for the preservation of said ship she was obliged to ship and let go another valuable anchor, usually called the larboard anchor, of the value of five hundred dollars, belonging to the same, which was thereby totally lost; and to repair the damage done to the said ship and her apparel, furniture and tackle thereof as aforesaid, the said ship was then and there necessarily forced and obliged to proceed to the port of St. Salvador, in the Brazils, to repair the same, and the said ship thereupon and then and there did proceed to said port of St. Salvador, where the said damage was repaired, and a new boat and two new anchors were purchased and procured to enable said ship to pursue her said voyage; and the necessary expenses incurred by the said Thomas in the premises amounted to a large sum of money, to wit, to the sum of two thousand dollars; and the said plaintiff further says, that while the said ship was repairing as aforesaid, to wit, at St. Salvador, he was obliged to pay certain charges and expenses, and pilotage, and hire, and employ and pay the wages and maintenance of certain workmen and seamen, to wit, of forty persons in and on board of said ship Dawn, in the whole amounting to one thousand dollars more. Whereby the said company, according to the tenor and effect of said last named policy of insurance, and of their promise and undertaking, thereupon, and then and there became and were liable to pay the rateable part of the charges and expenses aforesaid, which they, the said company, then and there ought to have paid and contributed, in respect of said insurance, amounting to a large sum of money, to wit, the sum of eighteen hundred dollars, to wit, at Boston aforesaid. Of all which said premises the said company afterwards, to wit, at said Boston, on the twenty-third day of November last past, had notice and proof; and although the said Thomas, during his lifetime, and since his decease the said Samuel, have done and performed all things on the part of said Thomas by said policy required to be done and performed, and although more than sixty days have elapsed since said notice and proof, yet the said company have not paid said sum of eighteen hundred dollars, or any part thereof, to the said Thomas, or since his decease to the said Samuel, but neglect and refuse so to do.

And, also, for that the said said Thomas, by Josiah Bradlee and George B. Carey, agents of the said Thomas in this behalf, at said Boston, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, according to the usage and custom of merchants, caused to be made a certain other writing, usually called a policy of insurance, in the same words and figures with that hereinbefore last set forth, which said policy the plaintiff avers was so made for the use and benefit of the said Thomas. Of which policy so made, the said company thereafterwards, to wit, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, at said Boston, had notice; and thereupon, thereafterwards, on the same day, in consideration that the said Thomas had paid to the said company the sum of twelve hundred dollars as premium for the assurance of fifteen thousand dollars on the said ship Dawn and her outfits

and oil in said last named policy mentioned, and valued at the sums therein severally set forth, and had promised to perform all things in said policy mentioned on the part of said Thomas to be performed, the said company promised the said Thomas that they would become, and they then and there did become, the assurers of the said vessel and her outfits, and oil in lieu of outfits, for the period mentioned in said policy last named, according to the tenor and effect of said last named policy, for the sum of fifteen thousand dollars, to be assured according to the said policy. In witness whereof, they caused the said policy to be signed by their president, and countersigned by their secretary.

And the plaintiff further says that the said Thomas was then and there, and continually afterwards, until his decease, interested in said ship and outfits, and oil in lieu of outfits, to a large value and amount, to wit, to the value and amount of all the moneys by him ever insured thereon, to wit, at said Boston; and, since his decease, the said Samuel, administrator as aforesaid, has continued interested thereon, until and at the time of the loss hereinafter mentioned. And the plaintiff further says that the ship Dawn, with her outfits laden on board, sailed from the port of New York on her said voyage, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and twenty seven, and thereafterwards, in the course of said voyage, to wit, on the high seas, on the first day of January, in the year of our Lord one thousand eight hundred and twenty eight, and at divers times between that period and the first day of February, in the year of our Lord one thousand eight hundred and thirty, a large amount and quantity of oil, to wit, the quantity of two thousand barrels of oil, was procured, made, and taken on board said ship in lieu of outfits; and thereafterwards, subsequent to the decease of said Thomas, but during the continuance of the risks of said policy mentioned, and thereby insured against, and while the said ship was pursuing her said voyage, to wit, on the Pacific Ocean, on the first day of January, in the year of our Lord one thousand eight hundred and twenty-nine, the said ship was, by the violence of the winds and waves, and other perils of the sea, greatly strained, damaged, and injured, and compelled to put into the port of Honolulu, in the island of Oahee, and necessarily did put into said port for repairs, and thereafterwards, to wit, on the same day, the said ship was duly surveyed and examined, and found to be, and was unworthy of repair, and incapable of being fitted for sea, and was totally lost to the plaintiff.

And the plaintiff avers that no vessel could then and there be procured to convey the said oil to the United States. And for the preservation of said oil, and to forward the same in a direction toward the United States, the said oil was then and there shipped on board the brig Andes, bound to the port of London, in Great Britain. And the plaintiff avers that said Andes, with said oil so laden on board, sailed on her said voyage, thereafterwards, to wit, on the nineteenth day of March, in the year of our Lord one thousand eight hundred and thirty, and while pursuing her said voyage and course towards the United States, on the high seas, heretofore, to wit, on the eleventh day of May thence next ensuing, and on divers other days and times between that day and the fifth day of July immediately subsequent, and during the continuance of the risks and perils in said policy mentioned, and thereby insured against, by the violence of the winds, waves, storms, and tempests, and by the excessive rolling and laboring of said vessel, and other perils of the sea, the casks containing said oil were started from their places, and greatly

strained, dented, shattered, and destroyed, and a large quantity contained therein, to wit, ten thousand gallons of oil, were, by means thereof, lost by leakage, wasted and spoiled, whereby the estate of said Thomas, and the said plaintiff in his capacity aforesaid, sustained an average loss or damage on said outfits and oil to a larger amount than five dollars per hundred dollars on all the money insured thereon, to wit, to the amount of sixty dollars by the hundred, for each and every hundred dollars insured thereon by said company, to wit, at said Boston, whereby, according to the tenor and effect of said policy, said company became liable to pay a rateable part of said loss, to wit, the sum of thirty-six hundred dollars, and thereafterwards, to wit, on the first day of August then next ensuing, the said brig Andes and her outfits and oil laden on board, while pursuing her said voyage on the high seas, and during the continuance of the perils assured against in said policy, were, by the dangers of the sea, totally lost. Of all which said premises the said company, afterwards, to wit, at said Boston, on the twenty-third day of November last past, had notice and proof, and although the said Thomas during his lifetime, and, since his decease, the said Samuel, have done and performed all things on the part of said Thomas by said policy required to be done and performed, and although more than sixty days have elapsed since said notice and proof, yet the said company have not paid said sum of three thousand and six hundred dollars, or any part thereof, to the said Thomas, or, since his decease, to the said Samuel, but neglect and refuse so to do.

Pleas.

And whereupon the said New England Marine Insurance Company pleaded, by their attorney, that they never promised in manner and form as the plaintiff thereof declared against them, and of this they put themselves on the country; and, thereupon, issue was joined between the said parties, and came on to be tried before the said circuit court, at the time thereof herein first before mentioned, by a jury for that purpose duly empannelled.

Plaintiff's evidence.

And the said plaintiff then and there, to maintain and prove the issue on his part, submitted to the court and jury a policy of insurance, the execution whereof by the defendants was duly admitted, and which is truly set forth in the pleadings in this cause; and, also, another policy of insurance underwritten by the Boston Insurance Company, the execution whereof was duly admitted, and which was of the time of the first mentioned policy, except that the sum insured was ten thousand dollars. The counsel for said plaintiff further produced a letter, purporting to be a letter from Henry Gardner, in the words and figures following.

Copy.

HONOLULU, *March* 19, 1830.

To Thomas Hazard, jr., Merchant, New York:

SIR: I sailed this day in brig Andes, Captain King, for London, with the cargo of oil belonging to ship Dawn. I pay freight six pounds ten shillings per imperial ton. I shall, on my arrival in London, wait for instructions from you a few days. The unfortunate situation I have been placed in by the failure of the ship Dawn, and all the particulars relative to my transactions here, will be forwarded to you in a duplicate by Mr. Stephen Reynolds,

whom I have authorized to that effect, by the earliest opportunity. I have paid off the whole crew. I have shipped on account of ship Dawn 38,800 gallons sperm oil—quantity obtained 53,541 gallons. The ship was stripped, sold in lots, also her stores, provisions, &c. The net amount of sales was 6,496 74; disbursements during the voyage, and expenses at this place, have been about five thousand dollars. Andes is a fine brig, owned in Liverpool. She called for refreshments on her passage from Lima to Manilla. I immediately closed with him for the freight. I have left with Mr Reynolds two thousand dollars to be remitted to you by bills or otherwise the first opportunity, believing it would promote your interest better than freighting it by London.

(Signed) HENRY GARDNER.

And also the letter of the plaintiff, the words and figures following:

NEW YORK, 28*th July*, 1830.

To the President of the Boston Insurance Company:

SIR: A letter from Capt Gardiner, late of the ship Dawn insured at your office, has been received this day. We annex a copy of it, and hereby abandon to the underwriters on that ship, and outfits, the interest insured. We are respectfully, your obedient servants,

S. HAZARD,
JACOB BARKER,
Executors of Thomas Hazard, jr., deceased.

Received July 31, 6 o'clock P. M.

And also the letters of the underwriters upon the ship Dawn, acknowledging the receipt of these letters, in the words and figures following:

BOSTON, *July* 31, 1830.

Messrs. S. Hazard and Jacob Barker, executors of Thomas Hazard, jr.

GENTLEMEN: I have received your letter of the 28th, together with the copy of a letter from Capt Gardiner of the ship Dawn. It does not appear by either that any accident has happened to that ship that would warrant an abandonment of her to the insurers; and I therefore must say to you that we decline accepting it. You will, no doubt, think proper to give such directions with regard to the cargo on its arrival in London, as will be best for the interest of the owners.

Respectfully,
JAMES HALL,
President N. E. M. Insurance Company.

The interest of the plantiff was admitted by the defendant, and it was further admitted that the recovery in this cause, if any, should be a pro rata recovery. The counsel for the plaintiff, further to support the issue above joined, produced the register of the ship Dawn in the words and figures following:

Permanent. No. 122. *One hundred and twenty-two.*

In pursuance of an act of the Congress of the United States of America, entitled "An act concerning the registering and recording of ships or ves-

sels," Thomas Hazard, jr., of the city, county, and State of New York, merchant, having taken or subscribed the affirmation required by the said act, and having affirmed that he is the only owner of the ship or vessel called the Dawn, of New York, whereof Henry Gardiner is at present master, and a citizen of the United States, and that the said ship or vessel was built at the city aforesaid, in the year 1816, as per register No. 208, issued at this port, on the 21st September last, now surrendered, the property being changed. And said register having certified that the said ship or vessel has two decks, and three masts, and that her length is one hundred feet; her breadth twenty seven feet three inches; her depth thirteen feet seven and ½ inches; and that she measures three hundred and twenty-six and $\frac{31}{95}$ tons; that she is a square std. ship, has a round tuck, no galleries, and a billet head. And the said Thomas Hazard, junior, having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said ship has been duly registered at the port of New York.

[L. s.] (Signed.) Joseph Nourse, Register.

[L. s.] (Signed.) D. Gelston, collector.

Given under our hands and seals, at the port of New York, this twenty-sixth day of May, in the year one thousand eight hundred and twenty-one.

[L. s.] (Signed) J. FERGUSON, *Naval Officer.*

District—port of New York. We certify that the within is a true copy of the original register granted to the ship Dawn, as taken from the counterpart on file in this office.

Given under our hands and seals, at the custom-house, this 2d day of July, 1832.

SAM. SWARTWOUT, *Collector.*
J. W. FERGUSON, *Naval Officer.* *J. P.*

The counsel, further to maintain the issue above joined, read the depositions of the said Henry Gardner, Nathan Hildreth, Zebedee Ring, Richard V. Skaats, Peter McNamara, Griffith Griffiths, James Keasley, respectivelly taken under commission from this court, and of Eleazer Foster, taken under statute by William Minot, commissioner.

Plaintiff's Interrogatories to witnesses.

Circuit court of the United States for the first circuit held at Boston, within and for the district of Massachusetts, in the cases there pending wherein Samuel Hazard, administrator with the will annexed, of the goods and estate of Thomas Hazard, jr., is plaintiff, against the Boston Insurance Company, and the New England Marine Insurance Company, defendants.

Interrogatories to be proposed to such of the following witnesses, and such other witnesses as shall be produced, sworn, and examined on the part of the plaintiff, to wit, Henry Gardiner, Nathan Hildreth, James Reeves, Eleazer Foster, John Dickason, William Blanchard, Lyman B. Cook, Henry Marriner, James S. Conkey, Silas Coburn, John Sealby, Charles Whiting, James Hunt, Gilson Whiteon, David Jacobs, Thomas Johnson, Preserved Fish, Laban Russel, Zephaniah Winslow.

1. What is your age, profession, or employment?
2. Do you know the parties to these cases, or either of them? and how long have you known them, or either of them?
3. Have you ever known the ship Dawn, recently owned by Thmoas Hazard, junior, of New York?

4. Have you had any, and what, opportunities of examining her?

5. Where was she built, and when built? who was her builder?

6. What was her condition at or about the twenty-ninth day of December, 1827? Was she then about sailing for the coast of Japan, and elsewhere, on a whaling voyage?

7. What repairs were made upon the Dawn immediately before sailing? How do you know that she was repaired?

8. Was she caulked and sheathed? if so, in what manner? If sheathed, with what materials? And what was the condition and appearance of her bottom?

9. Was she newly coppered? If so, to what extent, and in what parts? What was the quality of the copper used? What was done to her keel?

10. Do you know, and how do you know, what her outfits and the stowage of them were?

11. How well was the Dawn equipped for her voyage when she sailed from New York?

12. Do you know her late master, Captain Henry Gardner? What was his character and reputation as a master?

13. Is the oakum which is driven into the seams of vessels sometimes worked out by the action of the sea?

14. Did you sail from New York in the Dawn the latter part of the year 1827? If yea, please to state whether any, and what accidents and misfortunes of the sea, or otherwise, the said ship met with, and at what places, and at what times, such accidents and misfortunes occurred, and, particularly, what loss or damage was thereby occasioned?

15. How much did the Dawn leak on her passage to the Cape de Verds? How much more did she leak than a good vessel usually does, the first month at sea, after repairing?

16. What disasters did the Dawn meet with on her outward passage to the Cape de Verds? If she met with any casualties, describe them all particularly.

17. If you answer in the affirmative to the above question, what injury was thereby done to the ship, and what measures were taken to repair it?

18. Where was the mate who kept the log-book, when the accidents, damage, and losses you have stated took place? Did he make any entry thereof in the log-book? and if he did not, why was not this done?

19. Where did the Dawn go to from the Cape de Verds, and why, and when did she leave there? Whether or not is it customary for vessels, bound on whaling voyages to stop at the Cape de Verds on the outward passage?

20. Did you lose any boats, cables, or anchors, before your arrival at St. Salvador? If so, state such loss, and the value of each article lost?

21 Did the master cause the bottom of the Dawn to be examined at Port au Praya or St. Salvador? If so, in what manner, and was any, and what injury made known there?

22. Did Captain Gardner advise with the American Consul, or any other persons at St Salvador, as to having the vessel hove down? Could she havr been hove down and examined there?

23. What would have been the actual expense of having the Dawn hove down, and a new false keel, and stern put on at St. Salvador?

24. What time would have sufficed thus to repair the Dawn, and start her again upon the voyage?

25. Was the country around St. Salvador quiet and peaceable, or in a state of insurrection, at the time when the Dawn was there? Did the political situation of the country in any way effect the practicability of heaving down and repairing the Dawn? If so, in what manner, and for what reasons?

26. In case of heaving down the Dawn at St. Salvador, whether or not, would there have been any danger of losing the crew? If so, why, and in what manner? And whether or not would there have been any risk of losing the ship and outfits? If so, why and in what manner?

27. What effect, if any, would the loss of the crew by desertion have had upon the voyage? Did any of the crew desert there? If yea, how many? If the crew had deserted there, whether or not could another crew have been obtained at that place?

28. Did the Dawn proceed on her voyage from St. Salvador? Into what latitudes and longitudes did she go? Did she encounter any severe gales? If so, when and where? And what was the effect thereof on the cargo and vessel?

29. Did she leak much previous to a gale about the middle of May, 1828? When did she begin to leak badly?

30. Were any of the seams of the ship found open during the voyage? If so, when and to what extent? If this was so, when was it found to be so, and what caused it?

31. Did any water enter through such seams, to the danger or detriment of the ship or the cargo?

32. Did any gale take place on the thirteenth of September, 1829? If yea, describe its effect on the Dawn, and her cargo, and outfits on deck? State particularly what damages were by that gale occasioned.

33 What course did the Dawn pursue afterwards, and how was she employed? Did she leak? If so, to what degree?

34. What was the weather for some weeks subsequent to such gale, if any gale, there was?

35 Did or did not Captain Gardner state to his mates, or either of them, what his designs were respecting the course to be pursued by the Dawn while engaged in whaling, and whether or not did he disclose his intention, as to his course, after the gale of September 13th, 1829?

36. Why and when did the Dawn proceed to Honololu, and when was the determination taken to proceed to that place?

37. Were whales numerous or otherwise, and with what advantage could she have pursued the fishery if she had not returned to the islands?

38. Was the Dawn examined at Honololu; and by what means, and in what manner?

39. Did you inspect her bottom when she was hove down? If so, what was its condition? Whether or not did she appear to have been strained, and if so, in what parts, and how much? What was the state of her copper keel, stern, and stem? Describe each particularly.

40. How did the copper and sheating appear in the vicinity of the keel and stern? How in other places? Describe particularly the appearance of the bottom and keel, and especially as to the copper?

41. Whether or not had the copper pealed off? If so, where did it appear to have begun to part from the bottom?

42. Did it appear that the worms had found access to the bottom and keel of the vessel? If so, in what parts?

43. Where were the incisions of the worms in her bottom most deep? And what parts seemed to have been longest exposed, and most injured?

44. Was a survey had? By whom appointed? Who were the surveyors? What was their judgment on survey? And what was done in consequence thereof? Did it appear that the state of the ship at Honolulu, was caused by any preceding injury? If so, by what injury? Have you, or will you annex hereto, the return or certificate of the surveyors?

45. Could the Dawn have been properly repaired at Honololu? were materials and workmen to be found there? If yea, at what cost could she have been repaired?

46. What was the quantity of oil on board when she arrived at Honolulu?

47. Was the oil of the Dawn shipped in the British brig Andes?

48. Was there any other vessel there in which it could be shipped? If yea, what vessel?

49. Would it have suffered from leakage or any other causes, if it had been kept long ashore at that place?

50. Please state all losses, and any damage not yet described, sustained by the Dawn, and her outfits, oil, and appurtenances, or either of them during the voyage, with the occasion of them, the time of their occurrence, and their respective amounts.

51. Are you familiar with mercantile usages and customs? If so, what opportunity have you had to acquire such knowledge?

52. Do you know of any usage or customs of merchants engaged in the whale fishery, or any thing else material to the plaintiff in these actions? If so, you will please state the same as fully as if thereto particularly interrogated.

ELIAS HASKET DERBY,
Attorney to plaintiff.

A true copy of the pl'ffs interrogatories.
Attest: JOHN W. DAVIS,
Clerk of the Massachusetts District Court.

Cross-interrogatories by defendants.

Circuit Court of the United States, first circuit, district of Massachusetts, in vacation, July, 1832.

SAMUEL HAZARD, executor,
vs.
BOSTON INSURANCE COMPANY, and NEW ENGLAND MARINE INSURANCE COMPANY.

Cross-interrogatories to be propounded to such witnesses, as shall be lawfully examined under the annexed commission, in behalf of the plaintiff. The defendants hereby excepting to all not specially named in the caption of the direct interrogatories.

First. If in answer to the sixth direct interrogatory, you undertake to state the condition of the Dawn at the time therein mentioned, state where she was, in what situation she was placed, what parts of her were visible, and what were your means of knowledge of her character and condition.

Second. If you answer affirmatively to the seventh, eighth, ninth and tenth interrogatories, or either of them, be pleased to state the expenses of such repairs as you testify to; and annex the bills thereof to your answer; and where you have not the bills, state the items charged, and the amounts of each, and particularly the weight and size of copper used.

Third. If in answer to the ninth interrogatory, you say that the keel was coppered, state whether you say so from your own actual knowledge, or

from information, heresay, or belief only; and if from belief only, state particularly the grounds of your belief?

Fourth. Were the keel and false keel of said vessel covered with any thing more than leather?

Fifth. From what voyage had the ship returned next previously to the time when repairs were last put upon her in New York; and how long had she been absent?

Sixth. Was said vessel sheathed, or was her bottom covered with any material before she was coppered, before going upon her last voyage? If yea, describe in what manner, and with what materials she was so sheathed or covered; and state particularly the time when such sheathing or covering was put on.

Seventh. By whom was such sheathing or covering put on, and what were the expenses thereof? Annex the bills thereof to your answer.

Eighth. Was the said ship coppered over leather, and had the leather been on her for one or more voyages? If yea, for how many, and what voyages?

Ninth. Was any examination made of the bottom of said vessel after her return from her previous voyage, and previously to her sailing upon the last? If yea, describe particularly the nature of it, the manner, and the persons by whom, and in whose presence, and the instruments with which it was made.

Tenth. With what nails was the sheathing or leather covering fastened to said vessel? State the material of which they were composed, and their sizes, and annex the bills thereof to your answer?

Eleventh. If you have stated that the said vessel struck upon a rock at or near the Cape de Verds, state particularly how long she remained on the rock, how many times she struck, whether it caused her to leak, and generally all the effects of such striking upon the vessel.

Twelfth. If in answer to the eighteenth interrogatory, you undertake to state any reasons why the mate did not enter the accidents or losses inquired about in the log book, state how you know that such were the reasons, and how you obtained such knowledge, and who made the entries in the log-book, or on the slate.

Thirteenth. Did you come to anchor at the Cape de Verds, and if yea, what sort of weather had you while at anchor?

Fourteenth. If you lost any cables or anchors, state in what manner and by what cause such loss was occasioned; and if in answer to the twentieth interrogatory, you undertake to state the value of each article lost, state how you know it.

Fifteenth. If in answer to the twenty-second interrogatory, you state that Captain Gardner advised with any persons at St. Salvador, state their names, and how you know that he did so.

Sixteenth. If in answer to the twenty-third and twenty-fourth interrogatories, you undertake to state the expenses of heaving down the Dawn, and making the repairs mentioned at St. Salvador, and the time it would take, state your means of knowledge, and whether or not you have seen, or personally known, of similar operations and repairs at that place, or have settled the bills thereof? And if yea, upon what vessel, in what year, and season of the year, and by whom were such repairs made.

Seventeenth. If you answer affirmatively to the twenty-fifth interrogatory, state your means of knowledge, and how the fact inquired about prevented the heaving down of the vessel; in whose possession the harbor and

dock yards were, whether the ordinary business in them were carried on; and what reasons, if any there were, rendering it impossible to have the Dawn repaired there.

Eighteenth. If you answer affirmatively to the twenty-sixth and twenty-seventh interrogatories, state particularly your means of knowledge of the facts you state; and why there was any particular risk of losing the crew, and how you knew it; and how you know that, in case of their desertion, a new crew could not be had.

N neteenth. Were there many vessels at St Salvador at that time? If yea, of what kind, where from, and where bound?

Twentieth. Were there any American vessels there? If yea, what vessels, where did they sail from, and what were the names of their masters?

Twenty-first. What was the rate of sailors' wages at St. Salvador, and what service could they find employment in?

Twenty second. If, in answer to the twenty-eighth interrogatory, you say that any gales produced any effects upon the vessel and cargo, describe those effects particularly, showing what particular parts of each were injured, and to what extent?

Twenty-third. When did the vessel begin to leak badly, or so as to excite observation, and how much did she leak before the gale on the 13th of September?

Twenty-fourth. Who kept the log-book, and are the entries in it true?

Twenty-fifth. In what part of the vessel was the principal leak when you arrived at Honololu?

Twenty-sixth. What was the state of the vessels' bottom when she was surveyed at Honololu? Was it worm eaten, and was that the cause why a new keels, and new timbers and planks, were required?

Twenty-seventh. What was the state of her copper—how much of it was off, and in what places? and what was the condition and appearance of the rests?

Twenty-eighth. What was the keel covered with? and with what fastenings?

Twenty-ninth. What were the items constituting the expenses of repairs estimated to be necessary at Honololu? Be pleased to state them, specifying the computed cost of each.

Thirtieth. Have you had any conversations with the plaintiff, or captain Gardner, or any persons, about the facts you have stated, or the testimony you were to give in this case? If yea, when, where, and with whom?

Thirty-first. Where have you been since you left the Dawn?

Thirty-second. Have you read the log-book or protest, or the captain's deposition, or heard them, or any of them, read? If yea, when, and where, and in whose presence?

Thirty-third. Did you at any time discover that said vessel needed caulking, or other repairs, on the voyage? If yea, when, and at what places, and in what parts of the vessel? And what were the occasions or causes rendering such repairs necessary?

Thirty-fourth. If you answer affirmatively to the thirty-fifth and thirty-sixth interrogatories, state at what particular times, and in what places, such conversations were had, and all that was said, and the precise reason assigned for pursuing or altering the course.

Thirty-fifth. Are you in any wise related to, or connected with, the

plaintiff, or the other persons interested in this suit? or employed, or about to be employed, by either of them? If yea, state the nature of such relationship, connection, or employment.

Thirty-sixth. Did you at any time during the cruise get short of provisions, or apprehend becoming so? If yea, when, and where were you? and if any thing was done on that account, state what it was.

Thirty-seventh. Do you know any thing further which may benefit the defendants. If yea, state it as fully as if thereto especially interrogated.

Thirty eighth. If you allege any custom as inquired of in the fifty-second interrogatory, state how long it has existed, what knowledge you have of it; whether you have known any cases arising under, and ruled by it? And if yea, what cases, who were the parties, and where they reside, and what was done or decided in these cases, and how extensive such custom is?

CHARLES G. LORING,
Attorney of the Boston Insurance Company, and the New England Marine Insurance Company.

Reserving all right of exception to the plaintiff's interrogatories, as stated in the schedule thereof, herewith delivered and filed.

CHARLES G. LORING.

Objections to Plaintiff's interrogatories.

To the 18th. As improper to be proposed to any but the mate—so of 35th.

To the 22d. As improper to be proposed to any but the court.

To the 52d. As irrelevant, unless the inquiry be confined to the customs of whaling, and improper, as not designating the custom referred to, so as to enable defendants to cross-examine.

Further cross-interrogatories.

1. What was the state of her sails; and running and standing rigging? describe them particularly.

2 What became of the provisions of said ship? were they sold? and if yea, by whom, and what did they produce—what quantity of each kind was there, and who purchased them? If sold, annex an account of the sale to your answer.

3. Whether or not, had she any casks, hoops, or other outfits, on her last arrival at the Sandwich islands? If yea, how many of each kind, and what became of them? were they sold? If yea, in what manner, to whom, and at what prices. State all that you know about them, and annex the account of sales to your answers.

CHARLES G. LORING.

A true copy of the plaintiff's interrogatories.
Attest: JOHN W. DAVIS,
Clerk of Massachusetts District Court.

4. In what manner was the said voyage settled between the crew and the owners, and when was it settled? State the terms thereof, and, if practicable, annex a copy of the account of the settlement of the voyage, and all documents signed by the crew, master, or officers, in relation to the settlement of the said voyage.

dock yards were, whether the ordinary business in them were carried on; and what reasons, if any there were, rendering it impossible to have the Dawn repaired there.

Eighteenth. If you answer affirmatively to the twenty-sixth and twenty-seventh interrogatories, state particularly your means of knowledge of the facts you state; and why there was any particular risk of losing the crew, and how you knew it; and how you know that, in case of their desertion, a new crew could not be had.

Nineteenth. Were there many vessels at St Salvador at that time? If yea, of what kind, where from, and where bound?

Twentieth. Were there any American vessels there? If yea, what vessels, where did they sail from, and what were the names of their masters?

Twenty-first. What was the rate of sailors' wages at St. Salvador, and what service could they find employment in?

Twenty second. If, in answer to the twenty-eighth interrogatory, you say that any gales produced any effects upon the vessel and cargo, describe those effects particularly, showing what particular parts of each were injured, and to what extent?

Twenty-third. When did the vessel begin to leak badly, or so as to excite observation, and how much did she leak before the gale on the 13th of September?

Twenty-fourth. Who kept the log-book, and are the entries in it true?

Twenty-fifth. In what part of the vessel was the principal leak when you arrived at Honolulu?

Twenty-sixth. What was the state of the vessels' bottom when she was surveyed at Honolulu? Was it worm eaten, and was that the cause why a new keels, and new timbers and planks, were required?

Twenty-seventh. What was the state of her copper—how much of it was off, and in what places? and what was the condition and appearance of the rests?

Twenty-eighth. What was the keel covered with? and with what fastenings?

Twenty-ninth. What were the items constituting the expenses of repairs estimated to be necessary at Honolulu? Be pleased to state them, specifying the computed cost of each.

Thirtieth. Have you had any conversations with the plaintiff, or captain Gardner, or any persons, about the facts you have stated, or the testimony you were to give in this case? If yea, when, where, and with whom?

Thirty-first. Where have you been since you left the Dawn?

Thirty-second. Have you read the log-book or protest, or the captain's deposition, or heard them, or any of them, read? If yea, when, and where, and in whose presence?

Thirty-third. Did you at any time discover that said vessel needed caulking, or other repairs, on the voyage? If yea, when, and at what places, and in what parts of the vessel? And what were the occasions or causes rendering such repairs necessary?

Thirty-fourth. If you answer affirmatively to the thirty-fifth and thirty-sixth interrogatories, state at what particular times, and in what places, such conversations were had, and all that was said, and the precise reason assigned for pursuing or altering the course.

Thirty-fifth. Are you in any wise related to, or connected with, the

plaintiff, or the other persons interested in this suit? or employed, or about to be employed, by either of them? If yea, state the nature of such relationship, connection, or employment.

Thirty-sixth. Did you at any time during the cruise get short of provisions, or apprehend becoming so? If yea, when, and where were you? and if any thing was done on that account, state what it was.

Thirty-seventh. Do you know any thing further which may benefit the defendants. If yea, state it as fully as if thereto especially interrogated.

Thirty eighth. If you allege any custom as inquired of in the fifty-second interrogatory, state how long it has existed, what knowledge you have of it; whether you have known any cases arising under, and ruled by it? And if yea, what cases, who were the parties, and where they reside, and what was done or decided in these cases, and how extensive such custom is?

CHARLES G. LORING,
Attorney of the Boston Insurance Company,
and the New England Marine Insurance Company.

Reserving all right of exception to the plaintiff's interrogatories, as stated in the schedule thereof, herewith delivered and filed.

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Further cross-interrogatories.

1. What was the state of her sails; and running and standing rigging? describe them particularly.

2 What became of the provisions of said ship? were they sold? and if yea, by whom, and what did they produce—what quantity of each kind was there, and who purchased them? If sold, annex an account of the sale to your answer.

3. Whether or not, had she any casks, hoops, or other outfits, on her last arrival at the Sandwich islands? If yea, how many of each kind, and what became of them? were they sold? If yea, in what manner, to whom, and at what prices. State all that you know about them, and annex the account of sales to your answers.

CHARLES G. LORING.

A true copy of the plaintiff's interrogatories.
Attest: JOHN W. DAVIS,
Clerk of Massachusetts District Court.

4. In what manner was the said voyage settled between the crew and the owners, and when was it settled? State the terms thereof, and, if practicable, annex a copy of the account of the settlement of the voyage, and of all documents signed by the crew, master, or officers, in relation to the settlement of the said voyage.

5. When did the British brig Andes, which was at the Sandwich islands, and took the Dawn's cargo, arrive there? Where did she come from? On what voyage had she been, or was she bound? Whether or not, was she in pursuit of freight? And whether or not could she have been procured to bring the said cargo to the United States? and if so, on what terms?

6. What was the contract made between the master of the said brig, and the master of the Dawn? And what did you hear them say upon that subject? Be pleased to state all that you know.

On whose account and risk was the said oil shipped on board the said brig Andes? And how much was shipped, and what became of it?

What were the terms, or lays, upon which the officers and crew of the Dawn were shipped? State fully all that you know upon this subject, and if practicable, annex a copy of the shipping paper, or contract made with them.

CHARLES G. LORING.

The plaintiff's object to the defendant's sixth cross-interrogatory, as introducing the conversations of third persons.

A true copy of further interrogatories filed by the defendant's counsel, 18th August, 1831.

Attest: JOHN W. DAVIS,
Clerk of Massachusetts District Court.

6. Whether or not did you experience any gale of wind during the said vessel's voyage on cruising for whales? If yea, when, and whether or not, was any oil or blubber lost in such gale? If yea, how much, and in what manner?

CHARLES G. LORING.

A true copy of another interrogatory filed by defendant's counsel, August 23d, 1831.

Attest: JOHN W. DAVIS,
Clerk of Massachusetts District Court, per.
PATRICK RILEY.

Deposition of Richard V. Skaats.

Circuit court of the United States for the first circuit, held at Boston, in and for the district of Massachusetts.

Richard V. Skaats, Peter McNamara, Griffith Griffiths, James Kerby.

Depositions of witnesses taken in the city of New York, on the fourth day of April, in the year one thousand eight hundred and thirty-two, upon interrogations annexed to a commission issued out of, and under the seal of the above court, in a cause depending therein, wherein Samuel Hazard, administrator, is plaintiff, and the New England Marine Insurance Company are defendants; and, also, in another cause depending in such court, in which the said Samuel Hazard, administrator, is plaintiff, and the Boston Insurance Company is defendant.

Richard V. Skaats, being sworn, saith that he is twenty-seven years of age and upwards, by profession a sail-maker, and resides in the city of New York.

To the first interrogatory, he saith he was at Honolulu at the time mentioned, and knew the ship Dawn at that time and place. The ship was condemned there as innavigable.

To the second, he saith he did not.

To the third, he saith he thinks there were seventeen hundred barrels of oil laden on board the Andes, part of the cargo of the Dawn, to be carried, as he understood it, to London; the casks were in very good condition when the oil was shipped in the Andes.

To the fourth, fifth, sixth, seventh, eighth and ninth interrogatories, he says he knows nothing of the matters inquired of.

To the tenth interrogatory, he saith he was on board the Dawn on her outward passage inquired of, and on her arrival at the Cape de Verd Isles the vessel struck on a rock there, and knocked a piece of her false keel off.

To the eleventh, he saith that all he knows is, that a piece of the false keel came up at that time alongside of the ship. He does not know what other damage was done.

To the twelfth, he says the piece was, he calculates, about five feet long: don't know what part of the keel it was: it did come up alongside the ship, and he saw it laying on deck: he looked at it, but did not examine it particularly. It had copper on it—may have been four or five inches wide, and three or four inches thick.

To the thirteenth, he saith the ship was sheathed with leather from light water mark before her departure from New York, on her last voyage to the Pacific. It was put on in sheets, similarly to copper. It was in good condition.

To the fourteenth, he saith he saw the leather sheathing at Honolulu. It was off just abaft her bows, in consequence of having been at sea so long. Did not take notice if it had been eaten by worms The sheathing was damaged by the sea. Don't know of its being so in any other way.

To the fifteenth, he saith he don't know, and cannot answer to the interrogatory.

Being examined upon the cross-interrogatories annexed to such commission, he saith:

To the first cross-interrogatory, he saith he has answered the first part of such interrogatory, and is not interested in the event of this suit, nor in the employment of, or connected in business with, the persons interested therein.

To the second, he saith the casks were coopered separately as they came out of the Dawn, and were put on board the Andes: none of them were loose, weak, or injured, when put on board the Andes. The captain had the poor casks condemned, and got new ones.

To the third, he saith he knows nothing.

To the fourth, he saith he cannot answer. He believes the staves were of oak chiefly.

To the fifth and sixth, he says he knows nothing.

To the seventh, he saith he took notice of the sheathing of the ship when he was going alongside of her. He does not know when it was put on.

To the eighth, he saith he knows nothing

To the ninth, he saith he believes she was not coppered over leather: believes the leather was put on for that voyage. The part that he saw was new.

To the tenth, he saith he knows nothing.

To the eleventh, he saith he believes the nails were either copper or composition: don't know their size.

To the twelfth, he saith the keel was for the best part eaten off, and de-

stroyed by the worms. Understood that that was the cause that a new keel and new timbers and plank were required.

To the thirteenth, he saith that considerable of the copper was off in different places: don't remember how much. The rest appeared to be very thin.

To the fourteenth, he says she may have remained on the rock three or four minutes, perhaps a little longer: cannot recollect precisely how long. She struck once. He believes it did not cause her to leak. Don't remember any other effects of such striking than what he has stated, viz. the piece of the keel coming up.

To the fifteenth, he saith he refers to his answer to the twelfth direct interrogatory: he did not go close enough to the piece to examine as to its soundness.

To the sixteenth, he saith she did not leak until some time after the accident. Don't remember where it was she first leaked. It was in bad weather. Latterly she leaked much, both in good and bad weather. She did not leak before the accident.

To the seventeenth, he saith there was a ship called the Hoqua, of Boston, Captain Blanchard; the brig Herald, of New York—don't remember the captain's name. There were several other ships there, but he does not recollect their names.

To the eighteenth, he saith the Hoqua was there after the Andes arrived, and at the same time with her. Don't remember any others.

To the nineteenth, he saith there were no such vessels that he knew of: he believes they all had cargoes in.

To the twentieth, he saith the Hoqua was there. He does not know whether the oil could have been shipped on board her for the United States or not.

To the twenty-first, he saith he cannot tell any thing about it.

To the twenty second, he saith he has not seen Captain Gardiner, or either of the mates, since he saw them in the Sandwich Islands. He has not seen any one concerned in the suit except Mr. Hazard, and has not conversed with him about the matters to which he has deposed.

To the twenty-third, he saith he has not referred to any such papers or documents as are required of or referred to.

To the twenty-fourth, he saith he has not.

To the twenty-fifth, he saith he has been, since he left the Dawn, on the Island of Oahu. He was confined there with sickness for two years: was sent home by the American consul, and arrived at New Bedford about six weeks ago.

To the twenty-sixth, he saith he believes the nails were of the usual size; some were larger than those with which copper is usually fastened on.

To the twenty-seventh, he saith he does not.

RICHARD V. SKAATS.

Depositions taken at the city of New York on the eighth day of May, one thousand eight hundred and thirty-two.

Deposition of Peter Mc Namara.

Peter Mc Namara, being sworn, saith that he resides in the city of New York, is by occupation a shipwright, and of the age of forty-one years.

To the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth interrogatories, he saith he knows nothing of the matters inquired of.

To the thirteenth interrogatories, he saith he knows that the ship Dawn was sheathed with leather on the voyage previous to her last voyage to the Pacific. Witness sheathed the ship. He stripped the old sheathing off her bottom, thoroughly horsed and caulked it from the top of her wales down to her garboard streak; then sheathed the ship, nailed the sheathing with composition nails thoroughly; then squared the sheathing, and leathered her. She was felted under the sheathing. She was sheathed from the keel up to the top of her bends. As to the leather put on, they first trimmed the edges square, then began in the centre of the sheet, or side of the leather, and in the centre of the keel, to nail; then nailed it on the side of the keel, then on the garboard streak, and as far up as the balance of the hide would admit on the main bottom, one half being on each side of the ship. Then squared the top of the edge on the bottom, and continued the sheathing fore and aft. The leather put round the keel went up and down, or lengthwise, the sheets, so as to let them extend well on the bottom. Thus they continued as high as it was necessary to put the leather on. This was as high as they usually put copper on for a voyage to the Pacific—to deep ballast line. Previous to the last voyage he hove the ship out, and the condition of the ship was good. The leather itself was good: leather will not wear out under water.

To the fourteenth, he knows nothing.

To the fifteenth, he says that he does not know if any persons sheath vessels in New York with leather but himself. He has sheathed several vessels in that manner besides the Dawn. He thinks that leather is preferable to copper. The only objection is the delay of passages. The Dawn went out on a three years' voyage, performed the passage, and came home extremely well, all except a little of the leather on the side where they twist the whales in. That was somewhat rubbed. Don't know of any put on but by himself. Ships going to the Pacific, when they are coppered, put on very heavy copper, probably from thirty down to twenty-four ounce copper, and cannot make more than one voyage without new coppering. *The leather.* The leather, it has been tested, will last two voyages, and the worms will not touch it. It will last till the main bottom will want examining. Then it must come off, or whatever else is on. The leather, where it was rubbed off, was repaired before the last voyage. The leather on the Dawn, after her three years' voyage, was not touched by the worms at all. He has examined ships from the Pacific, where the worms have eaten through the sheathing, where the copper was worn off.

To the first cross-interrogatory, he says he has already in part deposed, that he is not interested in the event of the suit, nor in the employment of, or connected in business with, the parties to the suit.

To the second, third, fourth, and fifth cross-interrogatories, he saith he knows nothing.

To the sixth cross-interrogatory, he saith the ship had been on a whaling voyage to the Pacific Ocean. It was, no doubt, more than two years that she was gone: thinks it was about three years, but cannot tell exactly without referring to his books.

To the seventh cross-interrogatory, he saith he refers to his answer to the thirteenth direct interrogatory.

To the eighth cross-interrogatory, he refers to his answer to the thirteenth in part: thinks the expense was from twelve to eighteen hundred dollars.

They did a great deal of work to the ship. He has not, now, copies of the bills with him, but will produce them to the commissioners.

To the ninth, he says she was coppered over the leather on the last voyage, and that the leather had been on one previous voyage, as before stated.

To the tenth cross-interrogatory, he saith an examination of her bottom was made at the time inquired of. They hove her out, cleaned her leather, and then coppered over it. The leather was perfectly good, except as before stated, where twisting up the whales had injured it. The examination made by him was in the presence of the late Mr Hazard, the owner of the ship, Mr. Winslow, was there, who attended the store of Mr. Hazard, and deponent's workmen. They used wooden scrapers to take the barnacles off the bottom. They used wooden ones so as not to cut the grain of the leather.

To the eleventh cross-interrogatory, he says the nails used for sheathing were composition nails; he thinks two and a half inches long: what they put the leather on were, some an inch and a quarter, to an inch and a half long, of the same material. The copper was put on with nails an inch, or inch and a quarter long.

To the twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, and twenty-first cross interrogatories, he says he knows nothing.

To the twenty-second cross-interrogatory, he says he has not.

To the twenty-third cross interrogatory, he says he hath not referred to any papers, but his bills which he is to furnish.

To the twenty-fourth cross interrogatory, he answers: No.

To the twenty-fifth cross-interrogatory, he does not answer: he was not in the Dawn.

To the twenty-sixth cross-interrogatory, he saith the nails were of the size generally used in coppering vessels.

To the twenty seventn cross-interrogatory, he saith he does not recollect any thing.

P. McNAMARA.

Depositions taken at the city of New York on the ninth day of May, in the year one thousand eight hundred and thirty two, upon the additional interrogatories and cross-interrogatories to be proposed to the witnesses to be examined on behalf of the plaintiff.

Peter McNamara, being examined on the said additional interrogatories, deposeth as follows: To the first additional interrogatory on the part of the plaintiff, he saith a ship's keel covered with leather is scarcely protected against worms.

To the second additional interrogatory, he says he has seen leather on ship's bottom and keel after their return from long voyages to the Pacific Ocean, which leather had been on during the voyages, and the said leather was not worm eaten.

To the third additional interrogatory, he says he never knew worms to eat leather, or to enter a ship's bottom or keel through leather.

To the fourth additional interrogatory, he says he thinks a ship's keel covered with leather, is decidedly more securely protected than when coved with copper. Leather is put on with nails, a great longer than what are used for copper—as long again; and leather, being elastic, gives when the

vessel touches any thing; but the copper will break, and when once broken, starts the nails, and soon separates from the bottom

To the fifth additional interrogatory, he says copper usually wears off during long voyages.

To the sixth additional interrogatory, he says leather does continue good and a perfect protection against worms during the longest voyages.

To the seventh additional interrogatory, he says I have answered this fully in my answer to the thirteenth interrogatory of the direct examination to which I refer.

To the eighth additional interrogatory, he says if a coppered ship runs on rocks, and knocks off her false keel, and injures her fore foot, her keel and stern will be more exposed to the ravages of the worms, if she is coppered only, and not leathered, for the reason that the leather will bear more bruising than copper: copper will not afford as good a protection against rocks as leather, though neither of them will resist the rocks long.

To the ninth additional interrogatory, he says he does not believe that the keel, or any part of the bottom of the Dawn, would have been injured by the worms on the voyage spoken of, if she had not struck on the rocks.

To the tenth additional interrogatory, he says he does not know that he can say any thing further material to the plaintiff in the above actions.

The witness, Peter McNamara, being examined on the additional cross-interrogatories, deposes as follows:

To the first additional cross-interrogatory, he says his reasons are, that the leather is put on with nails nearly twice as long as those used for copper, and a greater quantity of nails are used for leather than for copper: leather will also wear much longer than copper. As to his means of knowledge or experience, he refers to his previous answers generally.

To the second additional cross interrogatory, he says, with regard to the leather on the Dawn, it was the same leather, apparently, which he, the witness, and his men had put on before her sailing. The witness also saw the Eliza and the Diana after their returns from their voyage; the leather which had been put by the witness on the said vessels prior to their voyages, remained in the same state as when they sailed. The witness examined the Eliza at two different times after her return from different voyages. Her first voyage was to the Mediterranean, and the second was some where to the south, I think to Mobile: at each examination, the leather appeared the same; after her second voyage, a part of her sheathing and leather were taken off, so that witness had a fair opportunity of examining the leather; it was perfectly good and replaced at the bottom, all of it, except some parts which were torn by the nails in taking it off. The Diana, when he saw her on her return, had been on a whaling voyage. Witness and his men hove her out on her return, and examined her.

To the third additional cross-interrogatory, he says the schooner Eliza, belonging to Jacob Barker, was the first vessel witness knew covered with leather; the second was the Diana, belonging to Thomas Hazard; the fourth was a southern schooner, used as a packet, whose name he does not now recollect, nor does he know to whom she belonged; the fifth was the ship Atlas, belonging to Johnson Chase. The Atlas went, after being sheathed with leather, on a whaling voyage. As to the other vessels, witness has already in his previous examination stated on what voyage they sailed. Witness put on the Dawn, or some other vessel of Mr Hazard, by way of experiment on the voyage, previous to her being sheathed with leather, a

side of leather. On her return from her voyage, the side of leather was good, and the copper bad. Witness is not quite certain whether it was the Dawn, or some other vessel of Mr. Hazard.

To the fourth additional cross-interrogatory, he says the use of leather for sheathing has been discontinued in this city, from the circumstance of Thomas Hazard having died four years ago, and, since his death, there have been but few whaling ships fitted out in New York.

To the fifth additional cross-interrogatory, he says he has already in his answers to the additional direct interrogatories stated the means of his knowledge. He refers to the voyage described in his previous answers. He does not know who were the masters of the vessels of which he has before spoken, except that Captain Gardner was the master of the Dawn.

To the sixth additional cross-interrogatory, he says in his business as ship-carpenter, he has frequently seen vessels with their fore foot, or gripes off, which had been coppered. And his answer in the eighth direct interrogatory in relation to vessels sheathed with leather is a matter of opinion.

To the seventh additional cross-interrogatory, he answers, he does not know any thing else beneficial to the defendant.

To the eighth additional cross-interrogatory, he says the keel of the Dawn, on her last voyage, was coppered, but not the bottom of her keel. Witness never coppers the bottom of the keel, except when specially ordered to do so by the owners, and that is but seldom the case.

To the ninth additional cross-interrogatory, he says he knows nothing further beneficial to the defendant.

Circuit Court of the United States for the first circuit held at Boston, in and for the district of Massachusetts.

Depositions of witnesses taken in the city of New York, on the twelfth day of September, in the year one thousand eight hundred and thirty-one, upon interrogatories annexed to a commission issued out of, and under the seal of the above court in a cause depending in such court, wherein Samuel Hazard, administrator, is plaintiff, and the New England Marine Insurance Company is defendant; and, also, in another cause depending in such court, wherein the said Samuel Hazard, administrator, is plaintiff, and the Boston Insurance Company is defendants.

Deposition of Henry Gardner.

Henry Gardner, being sworn, saith he is forty-three years of age, is by profession a ship master, though not now in any employ.

To the second interrogatory, he saith he knows Samuel Hazard: has seen the officers of the two companies, named as defendants, in Boston: has known Hazard as much as ten years: never saw the officers of the companies before last fall.

To the third interrogatory, he saith he has known the ship Dawn, recently owned by Thomas Hazard, junior, of New York.

To the fourth interrogatory, he saith he has sailed such ship, as master, for nearly six years, and has had every opportunity of examining her that any body ever had: examined her here, before he took charge of her on the first voyage, and on the second also, and took charge of her for two voyages; and, from his examination, was satisfied to take such charge.

To the fifth interrogatory, saith, he understood and believes the vessel was

built in New York: don't know when she was built: Mr. Bergh, of this city, was her builder.

To the sixth interrogatory, he saith, on the 29th December, 1827, her condition was good. She was then about sailing for the coast of Japan, and elsewhere, on a whaling voyage.

To the seventh interrogatory, he saith that the Dawn was coppered immediately before sailing, and was put in good repair. He knew she was repaired from seeing the biggest part of it done himself.

To the eighth interrogatory, he saith—believes her bottom was not then caulked or sheathed. He did not see it. She was sheathed and leathered at another time, but not then: where the sheathing was defective, it was taken off; new was put on, as also new leather and new copper over that. She was thoroughly overhauled, and every thing was done that was necessary; there was no restriction whatever. The sheathing, where defective, was taken off, and replaced with new; felting put underneath it, leather over the sheathing, and copper over that. The appearance and condition of her bottom was good.

To the ninth interrogatory, he saith the vessel was newly coppered, and was up to what is called deep water ballast. The copper used was principally twenty-two ounce, but is not certain about it. Her keel was coppered.

To the tenth interrogatory, he saith he knows what the outfits of the vessel were, and the storage of them: he saw them himself.

To the eleventh interrogatory, he saith the Dawn was well equipped for her voyage when she sailed from New York: had every thing necessary for her.

To the twelfth interrogatory, does not answer, as he is the person inquired of.

To the thirteenth interrogatory, answers yes.

To the fourteenth interrogatory, he saith he sailed from New York in the Dawn, in the latter part of December, 1827. She was in good order when he sailed. Nothing particular occurred till he was off the Western Islands some time in January: had a severe gale of wind sixty or one hundred miles west of Flores: lost one of his boats of the quarter in a gale: it was a very heavy gale: ship leaked very badly, as he expected: went through the islands to the Cape de Verds, a place at which he usually touched: never missed doing so, on his numerous voyages: went into St. Jago's: wanted to get vegetables, &c., and some ballast: sent his mate in first to see if he could get what was wanted: while the mate was gone, he wore the ship to wait for the mate: after he had wore her round, the ship struck on a rock heading off shore: she hung by the rock from ten to fifteen minutes till she backed clear round, and dragged off. During this she bore off eight or ten feet of her false keel, with a little piece of her fore foot attached to it: picked the piece of the false keel up. He then went in and anchored: went ashore: could get nothing, it being Sunday morning. He told the second mate to go ashore also: they were below, preparing to go ashore, and witness went forward: thought the buoy was further ahead than it ought to be, and found the ship was adrift: called the crew up, and let go the other anchor: went ashore, got a boat to weigh the anchor: tried, but could not purchase it: next day tried with two boats, which were all he could get, and with all his crew could not weigh the anchor: next morning broke out the hold, to get in ballast, hoping, if the weather was good, he should get the anchor. The rollers set in: did not leave the ship to go

on shore: had run out his stream anchor with winding tackle falls, at least one hundred and fifty fathoms attached to it, to keep her secure. The rollers were heavy: had a watch on deck, but went down to get his dinner about one o'clock: was quick at his dinner: when he went on deck, found the other anchor or chain was gone: she was hanging by the stream anchor. There was a reef of rocks within twenty rods directly astern of him—a very awful place. He immediately cut the stream, and put to sea: while in that part, sent a good swimmer under the ship: he reported the accident had not hurt the ship, only the place where the false keel had been taken off,—that the copper was not rucked. Stood off and on for a day or so, and at last sent the mates in, got the stream anchor with what was attached to it: beat off there two days: went in, spoke to the captain of the port. The captain said that he might wait a week—that the rollers were so heavy, the anchor might never be got: did not dare go in with the ship: finding he could not get in, deponent put away. Nothing particular occurred till he arrived at St. Salvador's: he purchased anchors there, got some ballast, and sent men under the ship to examine her again; some were Sandwich Islanders, and others their own men—good swimmers. From all the examination he supposed her competent to go on the voyage—that the piece torn off from her keel had not injured her. Nothing particular occurred till he got off the Island of St. Paul's and Amsterdam, to the eastward of the Cape of Good Hope. A gale of wind was met with, which hove the ship on her beam ends for ten minutes, and strained her very badly. He here lost another boat, and tore his foresail to pieces. Proceeded on to Japan, got a few whales there, and went to the Sandwich Islands. The divers again examined her bottom: they found nothing amiss. He felt perfectly safe about her, and went to sea: went from thence, and was at sea about four months, and then to the Ladrones: stayed there about ten days: replaced some sheathing on her bows. and put away again for Japan: got many whales there. In September, 1829, the typhoons set in, and tore the ship all to pieces. Lost fifty barrels of oil off the deck, and twenty casks of untried head matter. It continued four or five days, and made the ship leak very badly. She continued to leak, and he made the best of his way to the islands to see what was the matter with her: arrived at the Sandwich Islands, and called a survey upon the ship before he touched her. She was ordered to be discharged and hove out, which deponent did, and called the survey again: reported it was possible she might be repaired, if the materials could be procured to do it. Deponent hove her out on the other side, and the surveyors then condemned her. She was then stripped to her girtlings: sold every thing out of her singly, to make the most of it, and was eight or nine days about it.

To the fifteenth interrogatory, he saith the Dawn did not leak more than usual on the voyage spoken off, till she met with the gale of wind in September spoken of by him, then she leaked badly; till then she did not leak at all more than a good vessel, when first sent to sea after repairing.

To the sixteenth interrogatory, he saith, for answer to this interrogatory, he refers to his answer to the fourteenth interrogatory.

To the seventeeth interrogatory, he refers to his answer to his fourteenth interrogatory.

To the eighteenth interrogatory, he saith that when the vessel struck the rocks as deposed to by him, the mate was ashore in the boat; at all other times of the accidents, he was on board the vessel; presumes he entered all

the accidents in the log-book, except that at the Cape de Verds, when he was ashore in the boat.

To the nineteenth interrogatory, he saith he refers to his answer to the fourteenth interrogatory, except as to so much as relates to the custom herein inquired of, as to which he says that it is the custom for vessels on the outward passage to stop at the Cape de Verds, when bound on whaling voyages.

To the twentieth interrogatory, he refers to his answer to the fourteenth interrogatory, and adds that he paid seventy-five dollars to replace a boat lost; would not have taken one hundred dollars for either of his boats when he lost them, though he might get two nearly for the one hundred dollars here. He paid, he thinks, near five hundred dollars for the two anchors he purchased to replace those he lost. Those purchased were not as heavy as those he lost; they were between two and three hundred weight lighter a piece.

To the twenty-first interrogatory, he saith he refers to his answer to the fourteenth interrogatory.

To the twenty-second interrogatory, he saith he did advise with the American Consul and others at St. Salvador as to the propriety of having the vessel hove down. She could have been hove down and examined there. They fully agreed in opinion withhi m after the examination, that the vessel was competent to perform her voyage, that it would be attended with many inconveniences to heave down, viz. the probable loss of her crew, and attended with a heavy expense.

To the twenty-third interrogatory, he saith he cannot tell what would have been the actual expense inquired of. It would have been very heavy, though he cannot estimate it accurately. There was an insurrection of the negroes there.

To the twenty-fourth interrogatory, he saith he cannot tell how long would have been requisite, but it could not have been less, in his opinion, than two months to discharge the cargo, make the repairs, and get the crew in her, and ready for sea.

To the twenty-fifth interregatory, he saith that the country was far from quiet and peaceable while he was there. They were afraid of the negroes every day. Every merchant's door almost was closed. Many negroes more than one hundred were shot or beheaded while witness was there; the political situation of the country as deposed to by him, may not have rendered it impracticable to have her hove down, but made it much more difficult. There was not a ship there that did not expect to cut her cables at a moment's warning. Deponent would, however, certainly have tried to heave her down, had he thought it necessary. It was more difficult to get help; men were afraid to work; and would have charged more for it.

To the twenty-sixth interrogatory, every man would, he thinks, have deserted, if they had got ashore. He lost three men by desertion, and stayed two days to recover them; got two of them; not a man would have remained in the ship had he hove her down. Dont know that there would have been any risk of losing the ship, but thinks it would have broken up the voyage, as no crew could be got there for a whaling voyage.

To the twenty-seventh interrogatory, he saith he refers to his answers to the previous interrogatories.

To the twenty-eighth interrogatory, he saith he refers to his answers to the fourteenth interrogatory, except as to the latitudes and longitudes, as to which he cannnot now depose with precision, without the log-book.

To the twenty ninth interrogatory, he saith the vessel never leaked much

so as to annoy or alarm until after the typhoon spoken of in September, 1829; leaked somewhat more than some ships, and less than others.

To the thirtieth interrogatory, he saith from some of the seams of the butts, the oakum was spewed out from the butt ends of the plank, under the counter. It was above water; the first time he heard of it, was in the straits of Sunda; she did not leak from it. It was to a very little extent; only two or three butts. It was caused, he supposes, by the gales of wind, and he thinks in May or June, 1828; dont remember any other time when the seams were found open.

To the thirty-first interrogatory, he answers, No!

To the thirty-second interrogatory, he saith he refers to the answer to the fourteenth interrogatory, and believes the gale referred to as in that month, was on the thirteenth of that month of September. The sails set were fore-sail, mizen stay-sail, or try-sail, and foretopmost stay-sail; these were all torn to pieces.

To the thirty-third interrogatory, he saith he refers to his answer to the fourteenth interrogatory; she leaked on the passage to the islands from five hundred to nine hundred strokes per hour.

To the thirty fourth interrogatory, he saith it was fine weather, and he whaled on his passage.

To the thirty fifth interrogatory, he saith that he communicated to his mates his intention as to the course to be pursued by the Dawn before the gale of September, which intention was to fill up with oil where he was, and then return by the Cape of Good Hope: after the gale, he told the mates he should proceed to the Sandwich islands to examine the ship

To the thirty sixth interrogatory, he saith the Dawn proceeded to Honolulu in consequence of the gale, and immediately after it. They were long on the passage, having good weather, and chances to get whales. The determination was taken immediately after the gale.

To the thirty seventh interrogatory, he saith whales were plenty pretty much all the way to the islands, and at the place where he bore away; would have got as much oil as was wanted, had he pursued the fishery, and not returned to the islands.

To the thirty-eighth interrogatory, he saith she was, and for particulars refers to his answer to the fourteenth interrogatory.

To the thirty ninth interrogatory, he saith he inspected her bottom when she was hove down; the bottom was in tolerable good condition; the keel was all destroyed: she was some strained, not much. The copper was pretty much on; in some places it was off: there was probably three quarters of it on. The stem about half way up was destroyed, and the stern post the same.

To the fortieth interrogatory, he saith there was not much copper near the keel or stern; where the false keel had been torn off, the sheathing and copper were gone or torn. It was broke in many places; on the side where whales were brought, the copper and sheathing was broken; they were s ruck by the spade, and it is usual to have them cut in these places.

To the forty first interrogatory, he saith the copper was pealed off in no other way than where it was cut on the side where the whales were brought along side by the spade; where the false keel was was torn off, the water had a fair rake, and took the copper off. It appeared to have begun to part from the bottom; at the place where the false keel was torn off, there was but little torn off, the most of it was sound, only here and there a sheet off; some little under the bows was also off.

To the forty-second interrogatory, he saith the keel was pretty much all eaten up by the worms, as also the stern and stern post. There was very little damage done by them to the bottom, except that the garboard streak began to be worm eaten: replaced all that was so in the bottom: got four feet of plank to do so, before the condemnation.

To the forty-third interrogatory, he saith in her keel.

To the forty-fourth interrogatory, he saith the American consul appointed the surveyors on the survey inquired of: does not remember the names of all the surveyors. Captain William Blanchard of the Hoqua, of Boston, Captain Cheeves, of a barque of Boston, were part of the surveyors on the first survey: cannot remember the others. On the last there were Captain Blanchard, Captain Little, of the Diana of Boston, Captain John Meak, and Captain Solmes. These were the ship-masters: cannot remember the carpenter's names: thinks all the last above named were on the two last surveys. It appeared to deponent that the state of the ship was caused by a preceding injury, done in the knocking off the false keel before mentioned. Witness has not the surveys inquired of: they are not in his possession: believes they are in Boston: saw them in the hands of the underwriters at Boston at the time of his examination there.

Depositions upon the abovementioned interrogatories, taken on the thirteenth day of September, 1831, by adjournment from the twelfth instant.

To the forty-fifth interrogatory, he saith the Dawn could not then have been properly repaired at Honolulu: materials and workmen were not to be found there. If the materials and workmen had been there, she could have been repaired.

To the forty sixth interrogatory, he saith there was, by their gauge, about seventeen hundred barrels of oil on board at the time inquired of.

To the forty-seventh interrogatory, answers, yes, it was.

To the forty-eighth interrogatory, saith could have shipped the oil in ship Hoqua, if deponent had given that vessel two thirds of the oil for bringing it home.

To the forty-ninth interrogatory, he saith it would have suffered from leakage if kept long ashore at that place. If kept three months longer there, it would have been all gone from leakage and theft. It was all exposed, and he had to keep a guard night and day. He still lost more than one hundred and fifty barrels.

To the fiftieth interrogatory, he saith he does not recollect of any thing in particular more than he has before stated.

To the fifty-first interrogatory, he saith has never been a merchant, and cannot further answer, as he does not know to what usages the question has reference.

To the fifty second interrogatory, he saith he believes he has stated every thing material. There are many things not deposed to, but he cannot say whether they are material or not. He does not recollect any, he thinks, material.

The witness being examined upon the cross interrogatories annexed to such commission, saith:

To the first cross-interrogatory, he saith the Dawn was in the port of New York: he saw her keel out, and every part was visible from her keel up. He had sailed her before, and saw her then, and therefore had means of knowing her condition.

To the second cross-interrogatory, he cannot state what the expenses inquired of were. He never saw the bills: don't know the items charged, or the amount of the bills: as to the weight and size of the copper charged, he refers to his former answers.

To the third cross-interrogatory, he saith he saw the vessel after her keel was out, saw the copper on the stage, and the boss carpenter there, and went to dinner. When he returned, found her righted: asked the boss carpenter if the keel had been coppered, and was told by him it was done. Does not mean by being righted, that she was clear up. The keel was under water. They were coppering her. She had probably three or four streaks on. He believes the copper was put on, because he requested the carpenter to do it before he went to dinner: stayed on the stage with him. The carpenter said the men would not stay to do it, it being dinner time. Witness told him it would take but a short time, as the ship was laying heavy. He said they, the men, should have a short spell at dinner; they should break off the sooner in the evening: there was a considerable breeze on. Witness stayed with him a half hour. The copper and nails were there. The men did not return. He told the carpenter he should take but a short time for dinner—would be right back. He went to dinner. When he returned, the first question he asked the carpenter was, have you coppered the keel? He said he had. Witness said he had done it very quick. The answer was, how long will it take for sixty men to copper the keel of a ship? This is all the witness knows of the keel being coppered.

To the fourth cross-interrogatory, he saith the keel and false keel were sheathed as well as leathered. He has stated what he knows about the coppering.

To the fifth cross-interrogatory, he saith the ship had returned from a whaling voyage, as he believes, from the nature of the cargo brought home in her. Witness was not in her on that voyage: don't know how long she was absent.

To the sixth cross-interrogatory—that the sheathing, felting, and leathering of the vessel, was put on previous to the voyage preceding the one he has deposed to; that he saw it done in part himself; was on the stage while it was doing. She was then hove out, horsed every seam in her, then felted, then sheathed and leathered: cannot state month or year, precisely, that this was done, but it was on the previous voyage.

To the seventh cross-interrogatory—it was done by Zebidee Ring and Company. The amount of the expense he knows nothing of. Has not the bills.

To the eighth cross-interrogatory, he saith she was coppered on leather, which had been on her before, for one whaling voyage.

To the ninth cross-interrogatory, he saith there was an examination of the bottom, after the vessel's return from the previous voyage, and before her sailing on the last; saw the vessel hove out; was on the stage; but does not know what instruments were used. He was not then a party to the business; had nothing at that time to do with it. When he first saw the vessel, was not then engaged to go in her. He afterwards saw her hove down on the other side as before deposed to, after he was engaged. Ring and Company of New York were the persons putting the vessel in order; believed that Mr. McNamara was the partner of Ring, and they both attended to the business.

To the tenth cross-interrogatory, saith it was done with copper nails of the usual size. He knows nothing of the bills for the work.

To the eleventh cross-interrogatory, he saith he refers to his answer to the fourteenth direct interrogatory, and adds, that she probably struck a dozen times on the rock; kept thumping upon the rock for sometime, until she dragged off stern foremost. It did not cause the vessel to leak any, and no other effects were produced than what he has before stated, that he recollects.

To the twelfth cross-interrogatory, saith refers to his answer to the eighteenth direct interrogatory; don't know that any entry of the accident which happened when the mate was ashore, made in the log-book, or on the slate. The mate did not enter that because he was ashore; don't know that the mate saw the vessel on the rocks. He sent the mate ashore himself.

To the thirteenth cross-interrogatory, he refers to his answer to the fourteenth direct interrogatory.

To the fourteenth cross-interrogatory, he saith he refers to his answer to the fourteenth and twentieth direct interrogatories.

To the fifteenth cross-interrogatory, he advised with Mr. Odlin, the consul, and some merchants, (one was a Mr. Depeyster, who belongs to New York;) the names of the others he cannot now recollect.

To the sixteenth cross-interrogatory, he saith he has not known of similar operations at that place, nor settled any bills for such He judges of the time which he has before stated, was required for the work, from the information he got at the place as to the difficulties, and his own observation at the time.

To the seventeenth cross-interrogatory, he saith his means of knowledge were the information he got, and his own observation. The dock-yards and harbor were in the possession of the regular Government of the country. The ordinary business was carried on there. Has not said it was impossible to heave her down, but difficult, and expensive, and hazardous, for the reasons he has before stated in his answer to one or more of the direct interrogatories. Besides this, he did not consider it necessary.

To the eighteenth cross-interrogatory, he saith that there were no sailors to be got there acquainted with whaling business. That sailors, particularly on a whaling voyage, before they get any oil, will desert, and that he lost three men himself; recovered two of them; with difficulty got one there, and who was good for nothing.

To the nineteenth cross-interrogatory, saith there were several vessels at St. Salvador's at the time, but no whalemen; perhaps a dozen or twenty sail in the port, American, Frenchmen, Englishmen, patriot privateers. Does not know where they were from or bound.

To the twentieth cross-interrogatory, saith there was a brig from Boston, and a ship from Canton, bound to Philadelphia. Does not know the names of the masters or of the vessels. There may have been other American vessels there, but cannot remember them.

To the twenty-first cross-interrogatory, he knows nothing of the rate of wages; sailors could find no employment that he knows of but to go on board privateers.

To the twenty-second cross-interrogatory, he saith he cannot say any thing more than he has already deposed to in his answer to the direct interrogatories.

To the twenty-third cross-interrogatory—refers to answer to the former interrogatories. Before the gale in September before mentioned, the vessel would leak a hundred or a thousand strokes in twenty-four hours, according

as the weather might be; sometimes they did not pump her for a week, sometimes every day; but there was nothing of consequence, or that he at all cared about, till the gale before mentioned in September.

To the twenty fourth cross-interrogatory, the mate kept the log-book; whether all is true that is in it, or not, he does not know.

To the twenty-fifth cross-interrogatory, he saith the leak was principally in the vessel's bottom, near her keel.

To the twenty sixth cross-interrogatory, he saith, refers to his answer t the fourteenth direct interrogatory. Her being then worm-eaten was the cause why new timbers, new keel, and planks were required.

To the twenty-seventh cross-interrogatory, saith refers to his former answer to the fortieth and forty-first interrogatories.

To the twenty-eight cross interrogatory, saith it was felted, sheathed, and leathered, and coppered, and the fastenings were copper nails.

To the twenty-ninth cross interrogatory, saith there was so far an estimate, as that the carpenter there told him that he would give him $1,200, and let him put on what wood he could get, and witness would run the whole risk; he would undertake the job, to put on the keel, which was all the repairs she wanted; that is, the keel, the stem, and stern post. There were many imperfect propositions from people he paid no attention to, of no responsibility, who could not have executed the job. The particulars of these he does not remember.

To the thirtieth cross interrogatory, he saith he has had no conversation with the plaintiff in this suit, about the facts to be stated, or the testimony he was to give; did inform the plaintiff of the accidents. The plaintiff has never asked him a question about it; has talked with several other persons about these facts, but not to any one who had any particular interest in the vessel, that he knows of.

To the thirty-first cross interrogatory," saith he has been at Long Island at his residence. Has not been at sea, except that he went to London with the cargo, and then returned home.

To the thirty-second cross-interrogatory, saith he has read the log-book and protest, and the deposition made by witness in Boston; read the log-book or passages in it at different times, and protest; don't know if he read the former in any one's presence. The protest, on the giving up the ship, was read at the island when it was made: the consul, Mr Jones, was then present; read passages of the log-book at Boston when his deposition was taken.

To the thirty-third cross-interrogatory, saith he refers to his answer to the thirtieth interrogatory; and adds, remembers he put a little oakum under her knee on one occasion. Don't remember any other repairs, of any consequence, than those he has before stated.

To the thirty-fourth cross-interrogatory, saith the conversations referred to were off Japan in the vessel. His first communication was sometime in August, before the gale, when they were finding whales plenty; cannot remember what more was said upon the subject than he has before deposed to; the substance of it he has given; they calculated to fill up the ship soon, and get home easily. Immediately after the gale he told the mates of his determination, but he cannot recollect the particulars of the conversations, or all that was said, or any reasons assigned, but what he has before stated, for altering the course.

Depositions taken by adjournment, upon the cross interrogatories annexed to the beforementioned commission, on the fourteenth of September, in the year one thousand eight hundred and thirty-one, at the city of New York.

To the thirty-fifth cross interrogatory, he saith that he is in no ways connected with, or related to the plaintiff or parties, interested in this suit, nor is he employed, or about to be employed, by them, or either of them.

To the thirty-sixth cross-interrogatory, he saith he was never short of provisions on the cruise; as to his apprehension of his becoming so, he saith there was no time at which he apprehended of becoming short of provisions before he could have reached a port; there was no time at which he could not have gone and obtained provisions at ports within his reach, if he had been under the necessity of doing so, but he never was under any such necessity. He sold a quantity of provisions at the island.

To the thirty seventh cross-interrogatory, he saith he does not know any thing further. Believes he has stated all he knows of consequence.

To the thirty-eighth cross-interrogatory, he saith he cannot depose.

Being examined upon the further cross interrogatories, he saith—

To the first further cross-interrogatory, he saith the state of her sails, running and standing rigging, was as good as those of any ship that ever sailed from the port. He sold a full new set of sails, when she was condemned, with every particle of rigging necessary for a vessel; it had never been used; the sails and rigging, both standing and running, which were in use, were good; not more than half worn; were sufficiently good to come home with.

To the second further cross-interrogatory, saith the provisions were sold at the island at public vendue, by an auctioneer; cannot state the amount produced as he has not the bills, and does not remember the amount; cannot recollect the quantity of each kind. There was bread, beef, pork, and flour—of bread and flour a large quantity. Different individuals purchased them. He cannot recollect their names, as the provisions were put in small lots to make the most of them.

To the third further cross interrogatory, saith he sold a great quantity of casks there in shooks; new ones that had never been set from the time of his leaving New York: had no hoops to sell: sold several other outfits, boards, boatboards, and every thing appertaining to the vessel. It took eight or nine days for the vendue, as she was uncommonly well fitted out; sold harpoons, lines, and a great many other articles connected with whaling; thinks he sold of casks what would amount to six or seven hundred barrels; sixteen or eighteen new tow-lines, and one hundred to one hundred and fifty harpoons. Does not remember the number of the other articles sold: they were sold in separate parcels. The sails, one by one, were sold at auction, as before stated, to various persons; cannot state the prices without the bills. Has not the account sales to annex.

To the fourth further cross-interrogatory, saith he does not know of any settlement between the owners and the crew, or whether the owners ever saw the crew since their return. Deponent bought shares of a part of the crew there at the island, others took up their shares of the oil by the gauge, and shipped by the Andes. This settlement was after the ship was condemned, in February or first of March, 1830. They were all settled with and got their shares, except some few against whom the owners had accounts. Deponent gave to those with whom he settled 40 cents a gallon for

the oil; perhaps he brought the shares of one half the crew. The others shipped their shares in common with the rest of the oil by the Andes, and it was sold: what he bought did not produce him in London enough to indemnify him upon the purchase. He has several documents accompany such settlement which are not now in his hands, but are at his residence on Long Island, about 100 miles off.

To the fifth further cross-interrogatory, saith the brig Andes arrived at the Sandwich island the last of January or beginning of February, he thinks: is not positive: she came from Lima as the captain told him; does not know on what voyage she had been. The captain stated she was bound to Manilla. Deponent did not know his business, whether he was in pursuit of freight or not. He offered to take freight if he could get it on his terms. Deponent does not know if he could have been induced to come to New York with the cargo, but he offered him a heavy sum if he would call off New York for orders; offered him one thousand dollars to do so; which he would not accept. This was in addition to the London freight.

To the sixth further cross-interrogatory, saith the contract with the master of the Andes was to take the oil to London, and deponent was to give him £6 10 stg. per ton freight, and £80 stg. for primage; paid him $500 for passage money of himself and wife, finding his own small stores. The oil was shipped on board the Andes on account of the owners of deponent, and of those of the crew who shipped their shares by the brig. There was shipped by the gauge there seventeen hundred barrels, or near that; it was quite different from that amount w'en they got to London. It was sold in London, that is, what remained. There was between three and four hundred barrels leakage; cannot tell precisely the terms or lays on which all the crew were shipped without the articles: his own share was a sixteenth; the mate's was, as he believes, a twenty-fifth; the second mate had a forty-fifth, as he thinks; the shares then run from a fifty-fifth: to a two hundred and fortieth, as near as he can recollect: he has not the shipping paper with him: it is on Long Island, at his residence.

To the cross-interrogatory, filed August 23, 1831, he saith that he has answered the matters here inquired of in his answers to the fourteenth, and some of the other direct interrogatories.

(Signed) HENRY GARDINER.

Depositions taken by adjournment, on the fifteenth day of September, one thousand eight hundred and thirty-one.

Deposition of Nathan Hildreth.

Nathan Hildreth, a witness produced on the part of the plaintiff, being duly sworn, saith:

To the first interrogatory, he says he is forty-one years of age, and is a seamen by employment.

To the second interrogatory, saith he knows Mr. Samuel Hazard, and has known him about four years; he knows nothing of the defendants.

To the third interrogatory, saith he has known the ship Dawn owned by T. Hazard, jun'r, of New York.

To the fourth interrogatory, saith has had opportunities of examining her; went as mate in her from New York on her last voyage; saw her hove out at Honolulu.

To the fifth interrogatory, saith does not know when or where she was built, nor who was her builder.

To the sixth interrogatory, saith her condition at the time spoken of was good, as he thought; she was then about to sail on her voyage, and she was then nearly full; she was about sailing for the coast of Japan, and elsewhere, on a whaling voyage. If he had not thought her in good condition, he would not have gone in her.

To the seventh interrogatory, saith cannot tell all the repairs put upon her before her sailing; heard of her being coppered, &c.; but knows nothing of it; her sails and rigging and upper works were in good order for a three years' voyage: saw most of this work done himself.

To the eighth interrogatory, saith he knows nothing personally; if the question relates to what was done to the ship's bottom when in New York, only from hearsay: she was a coppered and sheathed vessel, but when it was put on, he does not know. Thinks she was sheathed with leather—some part of her was; whether the whole of her bottom was, or not, he cannot say: the materials of the sheathing were board and felt, as well as leather. He did not see her bottom in New York: it looked fair in Honolulu; on the larboard side it looked well; on the starboard side about two-thirds of her copper was off.

To the ninth interrogatory, saith cannot answer to his own knowledge; did not see her bottom in New York.

To the tenth interrogatory, saith she had all the outfits properly belonging to a whaling ship: every thing that is required for one; they were properly stowed for the voyage.

To the eleventh interrogatory, saith she had a full crew, proper sails, and every requisite equipment.

To the twelfth interrogatory, saith the character and reputation of Capt. Gardiner as a master was, as far as he knows, good.

To the thirteenth interrogatory, answers yes.

To the fourteenth interrogatory, saith he did sail from New York in the Dawn at the time spoken of: about a month out, they lost a boat in a gale; about six weeks out, at Port Praya in the Cape de Verds, the ship got on a rock: deponent was then ashore; they there lost one anchor, and broke another. Don't recollect of any particular accident after that till they got off the coast of Japan, when in the month of September as he thinks in the year 1829, they experienced a heavy gale of wind, which set the ship leaking. They then proceeded to Honolulu in the Sandwich Islands. There they unloaded the ship, hove her out, and she was surveyed; the survey condemned her as unseaworthy: the voyage was then broken up; all hands discharged. They also lost a boat in the Indian Ocean.

To the fifteenth interrogatory, saith the Dawn leaked on her passage to the Cape de Verds, about two or three hundred strokes per hour: they calculated that as the water leaking out of her ground tier leaked about as much as vessels just out commonly leak, believes nothing more, it did not trouble them any.

To the sixteenth interrogatory, saith on that passage nothing happened to her except losing their boat.

To the seventeenth interrogatory, saith no measures were taken to repair, as there was no accident on the outward passage to Cape de Verds, except losing the boat.

To the eighteenth interrogatory, saith he was on board the ship when the boat was lost: when she went on the rocks he was ashore: was aboard when the anchors were lost, and also at the time of the other accidents deposed to by him. The log-book was kept by himself, entered all the acci-

dents in the log-book, except her going on the rocks. Not being on board at the time, and not having seen the vessel when on the rocks, he did not enter the circumstance in the log; it slipped his memory.

To the nineteenth interrogatory, saith the Dawn went from the Cape de Verds to Bahia, St. Salvador; she left the Cape de Verds on account of her want of anchors; thinks she left there about the first of February, but cannot tell exactly; it is customary for whaling vessels on the outward voyage to stop at the Cape de Verds; it has been the custom with all the vessels he has been in or known.

To the twentieth interrogatory—refers to his former answers: cannot state the value of the boat and anchor lost, or of that broken.

To the the twenty-first interrogatory, saith thinks there was a man who dove down at St. Salvador or Port Praya, he is not certain which place, and examined her bottom: it was a man belonging to the ship; there was no injury discovered to the vessel upon this examination, that he recollects.

To the twenty-second interrogatory, saith don't know whether Captain Gardiner advised with any one at St. Salvadors, as to the heaving down the vessel; she could have been hove down and examined there.

To the twenty-third interrogatory, saith cannot tell the expense.

To the twenty-fourth interrogatory, saith it would have taken two or three months: all her cargo must have been taken out and put in again; she must have been hove down to a hulk.

To the twenty-fifth interrogatory, saith the country round St. Salvador's was in a state of insurrection when the Dawn was there: cannot say how this would have affected the heaving down, and repairing the vessel.

To the twenty-sixth interrogatory—the crew would have run away if the vessel had been hove down at St. Salvador's. Don't know of any risk of losing the ship or outfits.

To the twenty-seventh interrogatory, saith if the crew had run away, thinks it would have been a total loss of the voyage, as they could not have got a whaleman there: three of the crew deserted there. Doubts if another crew could have been got there: might possibly have got a foremast crew, but not officers, that is, boat steerers and others.

To the twenty-eighth interrogatory, saith the Dawn proceeded on her voyage from St. Salvadors, went south to about forty-six or forty-seven, and through the longitude of the whole Indian Ocean to the island of Java: she encountered severe gales: in March or April, in the Indian Ocean, she met a gale, but nothing of any consequence: they lost a boat in that ocean scudding, but the ship received nothing of material injury. Down to this time they had taken no cargo.

To the twenty-ninth interrogatory, saith she did not leak any thing uncommon previous to a gale about the time inquired of, viz. May, 1828. She began to leak badly off Japan in the month of September, as he thinks, 1829, after meeting a typhoon.

To the thirtieth interrogatory, saith some of the seams were found open in the Straits of Sunda; they were in her upperworks, under her channels; it was to no great extent; some places were open. He discovered it in April, 1828: cannot say what caused the opening: may have been from the oakum being washed out, or from not being well caulked.

To the thirty-first interrogatory, saith no water entered to the danger or detriment of her cargo.

To the thirty-second interrogatory, saith supposes the gale in September, before deposed to, is the one now inquired of: they had then a severe gale.

The ship was set leaking---split some sails, the foresail, foretopmast-staysail; lost about forty barrels of oil off the deck. Don't remember any thing else.

To the thirty-third interrogatory, saith the Dawn went to the eastward; went to the Sandwich islands; went on as fast as they could in the day time; did not run at nights on account of the danger. They whaled upon the passage; stopped to do so whenever they saw a whale; she leaked from six to nine hundred strokes an hour on this passage.

To the thirty-fourth interrogatary, saith the weather was good during the time inquired of, as far as he recollects—at any rate there were no heavy gales.

To the thirty-fifth interrogatory, saith Captain Gardner did state to the mates the course he meant to pursue while engaged in whaling: they were, as stated to witness to stay to the westward, fill up the ship, and come home by the Cape of Good Hope. After the gale of September he told witness his intention was to get to the Sandwich islands as quick as he could.

To the thirty-sixth interrogatory, saith the vessel proceeded to Honololu on account of the leak: she proceeded there immediately after the gale, and the determination was taken to do so immediately after.

To the thirty-seventh interrogatory, saith whales were numerous: they would have stayed longer if the ship had not leaked, and it would have been advantageous to have done so. It was then nearly the season for vessels to go to the islands.

To the thirty-eighth interrogatory, saith the Dawn was examined at Honolulu; her cargo was taken out; she was hove out keel out, and a survey had upon her.

To the thirty-ninth interrogatory, saith went on the stage, and looked at her bottom, but paid no particular attention to it; was busy ashore; the keel appeared worm eaten; the copper on her bottom was a good deal off on her starboard side; on the other side pretty fair: the ship did not appear to have been strained; her keel had very little copper on, if any; did not see any on it, but there might have been some on as he had no opportunity of seeing it: the stem and stern appeared a good deal worm-eaten: means by the stern the stern post, not the stern out of the water.

To the fortieth interrogatory, saith the copper was about as good there as elsewhere, according to his best recollection, as far as he saw: he had not much opportunity of seeing; in some places the copper was off, in others on; the sheathing was on for the most part; some small spots may have been off; has nothing further to say as to the appearances of the bottom or keel; the copper on the garboard streak was as good as in any part.

To the forty-first interrogatory, saith the copper had commenced to peal off at her bows.

To the forty-second interrogatory, saith the worms appeared to have had access to the keel, but not to the bottom.

To the forty-third interrogatory, saith, dont know of any incisions in her bottom by the worms at all: her keel, stem and stern post, appeared most injured and longest exposed.

To the forty-fourth interrogatory, saith a survey was had as inquired of: the surveyors were appointed by captain Gardner; the American consul was one; they were merchants and sea captains, but he forgets their names They decided she was unseaworthy, and she was condemned; it appeared that her keel was eaten by the worms; that was all that was wanting in her; otherwise she was good; has not the return of the surveyors: if it had been a

good keel, she would have been otherwise good: her keel, from the worms getting in it, was not seaworthy—this the surveyors said.

To the forty-fifth interrogatory, saith the Dawn, he hardly thinks, could have been repaired at the island, so as to enable her to come round Cape Horn; the workmen there were not competent, as he thinks, nor was there timber fit for a keel.

To the forty sixth interrogatory, saith there was between seventeen and eighteen hundred barrels of oil on board.

To the forty-seventh interrogatory, answers, yes!

Depositions taken by adjournment on the sixteenth day of September, in the year one thousand eight hundred and thirty-one.

To the forty-eighth interrogatory, saith there was an American ship there, in which the oil might have been shipped, viz· the Honqua.

To the forty-ninth interrogatory, saith it would have suffered from leakage and from being stolen, if kept long at that place, as well as paying storage.

To the fiftieth interrogatory, saith, believes he has stated all the damage to the vessel or her outfits, or the oil, occurring on the voyage:—he does not recollect any other at present.

To the fifty first interrogatory, saith he has not been a merchant, and knows but trifling the usages inquired of.

To the fifty-second interrogatory, saith does not know of any custom or usage material to the plaintiff, or of any fact or matter than he has before stated.

To the cross-interrogatories annexed to such commission, saith:

To the first cross-interrogatory, saith the vessel was then at Pike street wharf, in New York; she was empty when he went on board; he loaded her himself; she had been overhauled and coppered as he heard; she was on her keel, and laying light.

To the second cross-interrogatory, saith cannot answer as to the expenses of the repairs put upon her at all; does not know the weight and size of the copper; has not the bills, and does not know the amounts, or the items charged.

To the third cross-interrogatory, saith he refers to his answer to the ninth interrogatory, and cannot answer further.

To the fourth cross-interrogatory, saith the keel and false keel were not covered with any thing more than the leather, that he saw.

To the fifth cross-interrogatory, saith don't know what had been her previous voyage: heard she had been round Cape Horn. Don't know the length of her previous voyage.

To the sixth cross-interrogatory, saith the copper was put upon sheathing and leather, before her sailing on the last voyage. He cannot state what materials were used, as he was not here when it was done. Saw her bottom in Honolulu, and from then observing her, is able to state, she was sheathed and leathered before coppered: does not know the time when the sheathing and leathering was put on.

To the seventh cross-interrogatory, saith cannot answer, and has not the bills, and cannot state the expense.

To the eighth cross-interrogatory, saith she was coppered over leather. How long the leather had been on he does not know.

To the ninth cross-interrogatory, cannot answer.

To the tenth cross-interrogatory, saith he does not know any thing of the matters inquired of

To the eleventh cross-interrogatory, saith he was ashore, and cannot tell the time she remained on the rocks, or how often she struck. It did not cause her to leak: knows of no effects upon the ship produced by her striking upon the rock: there were none that he ever discovered. Upon recollection, says that a piece of the false keel, about twelve feet long, was knocked off, and taken on board, with copper on it: saw the piece himself on board.

To the twelfth cross-interrogatory, saith refers to his answer to the eighteenth direct interrogatory.

To the thirteenth cross-interrogatory, saith they came to anchor there: had strong trades and a heavy swell.

To the fourteenth cross-interrogatory, saith lost one anchor by the ring breaking off; of the other the fluke broke: did not lose this anchor, but it was of not much use.

To the fifteenth cross-interrogatory, cannot answer.

To the sixteenth cross-interrogatory, saith it would have taken the time he has mentioned, according to his judgment: has been there before, and ashore: has not known of any similar repairs or operations done at that place, nor has he settled the bills for any such.

To the seventeenth cross-interrogatory, saith saw the country was in an insurrection. Some stores were shut up. The negroes came in pretty much every night, and one day. Cannot say how the insurrection would prevent the heaving down the vessel. The harbor and the dockyards were in the King's possession. The insurgents had not possession. Believes the ordinary business was carried on there. Don't know of any reasons making it impossible to repair the Dawn there. The loss of the crew would have been a great reason; the expense another; and time.

To the eighteenth cross-interrogatory, saith knows the facts from being there, and the crew running away, and intending to do so. They had great difficulty in getting one new man to fill up the place of one man who had run away—one of the three who deserted. They recovered two.

To the nineteenth cross-interrogatory, saith there were many vessels at St. Salvador's at the time: brigs, ships, &c.; some Americans: one bound to Salem. There were vessels of almost all nations there. Cannot tell further, where they were bound, or whence from. Believes the Salem brig was from the East Indies.

To the twentieth cross-interrogatory, saith the Salem brig is the only American he remembers.

To the twenty-first cross interrogatory, saith, does not know the rate of wages at St. Salvador's: sailors could have found employment in the patriot service, privateering, &c.

To the twenty-second cross-interrogatory, saith, can say nothing more particularly than he has deposed to in his answers to the direct interrogatories referred to. The gales referred to were all preceding to the gales in September, 1829, and his former answers are so to be understood; and as to the damage sustained by the ship or cargo in the gale of September before deposed to, he refers to his answers to the direct interrogatories: remembers nothing material happening to the ship or cargo in any gale from her leaving St. Salvador's till she was condemned, than what he has before stated.

To the twenty-third cross-interrogatory, saith she began to leak badly

during the September gale. She might have leaked prior to the gale a hundred strokes an hour—a common spell in a watch.

To the twenty-fourth cross-interrogatory, witness kept the log-book. The entries in it are true.

To the twenty-fifth cross-interrogatory, saith the leak was in her upper works chiefly, and there was a leak under her starboard quarter.

To the twenty-sixth cross-interrogatory, saith her bottom was as he has stated before. Her keel was worm eaten, and stem and stern post worm-eaten some. Don't know of her bottom being worm eaten. The timbers of the ship were sound, as far as he knows. Don't know of new timbers or plank being required ; that is, aside from the keel.

To the twenty-seventh cross-interrogatory, he refers to his former answers.

To the twenty-eighth cross-interrogatory, saith there was nothing on the keel when he saw it. There may have been something on it, which he did not see : he had not a fair view of it.

To the twenty-ninth cross-interrogatory, saith, cannot answer the interrogatory.

To the thirtieth cross-interrogatory, saith he has had no conversation with Mr. Hazard, the plaintiff, about the facts he has herein before deposed to, nor as to the testimony to be given by him : has talked with people casually about the accident to the Dawn on the voyage : has talked the voyage over with Captain Gardiner : has never talked to any one as to what testimony he was to give in this case.

To the thirty-first cross-interrogatory, saith, has not been in employ since he left the Dawn. He went from the island in the Andes, with Captain Gardiner : stopped at Rio Janeiro ; and from thence came home.

To the thirty second cross-interrogatory, saith he wrote the log-book : signed one protest at Honolulu : did not hear the one at St. Salvador's read: Has never read, or heard read, the captain's deposition. The American consul was present when the protest was read at the island : believes Captain Blanchard was there also. The protest at St. Salvador's was not extended, he believes.

To the thirty-third cross-interrogatory, saith, discovered that the vessel needed caulking when she was at Honolulu, and before she got there. They went in there to caulk and repair. They also found she wanted some caulking in the straits of Sunda, which they did themselves. The caulking was required in her waist and deck. This is what they discovered in the straits of Sunda. They did it themselves : it is common for all vessels to do some caulking at sea. The oakum getting out, made it necessary to caulk her.

To the thirty-fourth cross-interrogatory, saith the conversations took place on the coast of Japan : the conversation was, that it was thought they could make the passage quicker by coming round the Cape of Good Hope: that they would fill up, and go home that way. This was all in substance. After the gale, the conversation was about their going to the Sandwich Islands—altering their course on account of the leak. This was the amount of what was said on this occasion. The conversations were held with the second mate also.

To the thirty-fifth cross-interrogatory, he answers, no !

To the thirty-sixth cross-interrogatory, saith, never got short of provisions, nor apprehended it during the cruise.

To the thirty-seventh cross-interrogatory, saith, knows nothing.

To the thirty-eighth cross-interrogatory, cannot answer.

Being examined on the further cross-interrogatories, saith:

To the first further cross-interrogatory, saith the state of her sails, standing and running rigging, was good when she left New York: continued good during the voyage; that is, they always had plenty of sails and rigging. On their arrival at the island of Honolulu, they had a new suit of spare sails which had never been bent, and were brought with them from New York.

To the second further cross-interrogatory, saith the provisions were sold by order of Captain Gardiner, by a merchant, at public sale. Does not know what they produced, nor the quantity of each kind, nor the names of the purchasers: different individuals bought them. Has no account of sales.

To the third further cross-interrogatory, saith she had shooks and some hoops: cannot tell how many there were—perhaps four hundred barrels of shooks: they were sold at the island: cannot remember to whom sold, or the prices: they were sold in lots: has not the account of sales.

To the fourth further cross interrogatory, witness settled with Gardiner at home: don't know how the crew were settled with, except that he understood some of them were settled with by captain Gardiner. He bought their shares: they owed him money: cannot recollect the terms of such settlement. As to the shares of the others of the crew, he does not know any thing about the settlement with them, or whether they are yet settled with. Witness settled according to his lay. Has no accounts or documents about such settlement in his hands.

To the fifth further cross-interrogatory, saith, thinks she arrived at the island last of February or first of March. She came from the coast of Peru: had been on a trading voyage, and was after freight: came there to see if she could get freight: supposes she could have been got to bring the cargo to the United States, if Captain Gardiner had paid enough for it. Cannot tell on what terms she could have been procured for that purpose.

To the sixth further cross-interrogatory, saith, does not know what the contract was: heard Captain Gardiner say he was to give so much per ton for freight: cannot now remember what it was: knew then. The oil was shipped at the risk and on account of the owners. He supposes Captain Gardiner, Mr. Hazard, and the part of the crew not bought out, were the owners, himself included: believes over seventeen hundred barrels were shipped: expects it was landed in London, and sold there: deponent's lay was one twenty-fifth: he does not know about the rest: has not the shipping articles or contract in his possession.

To the cross-interrogatory filed on the 23d August, 1831, he saith, refers to his answer to the thirty-second direct interrogatory: has nothing further to state as to the matters inquired of.

(Signed) NATHAN HILDRETH.

Depositions taken by adjournment on the nineteenth day of September, in the year one thousand eight hundred and thirty-one. Zebdee Ring, a witness produced on the part of the plaintiff, being duly sworn, saith:

To the first interrogatory, saith he is forty-five years of age, and over; and is, by profession, a shipwright and shipchandler.

To the second interrogatory, saith he knows Mr. Samuel Hazard: has known him probably for ten years: knows nothing of the defendants.

To the third interrogatory, answers, yes!

To the fourth interrogatory, saith he has had an opportunity of examining her, from repairing the ship twice, generally.

To the fifth interrogatory, saith she was built in New York by Christian Bergh, as he thinks, but cannot tell in what year.

To the sixth interrogatory, saith she was repaired by deponent in October, 1827, in the city of New York, and was furnished with materials from his store as late as the 28th of December, 1827. She was in a good state and condition after the repairs put on her. She was fitted out for a whaling voyage, and was well fitted for a whaler. Does not know where she was bound, exactly.

To the seventh interrogatory, saith the vessel was caulked generally all over, except her bottom, which could not be caulked, as it had been previously sheathed: she had before been sheathed with wooden sheathing, and leather over it. On examining the bottom, it was found that much of the leather, where the fish was brought alongside, was considerably torn and injured. The wooden sheathing was found very much eaten by the worms in consequence of the leather being off. That sheathing was removed from the bottom, and replaced, and then re-leathered. She was hove keel out, and wherever the leather was defective, or torn off, it was replaced with new leather; and wherever the sheathing was worm eaten, they put on new sheathing, as well as leather. They then coppered her up to light-water mark, over the leather. It is not usual to copper vessels that are leathered; indeed, the leathering of ships was rather singular: deponent had perhaps leathered half a dozen ships. The repairs then put on were after the ship had performed about a three years' voyage on a leather bottom. The copper was ordered to be put on to satisfy Captain Gardiner, who would not go in the ship unless she was coppered. Hazard told him that was the reason why she was coppered over leather, viz. to satisfy Captain Gardiner, not that he wanted it: Gardiner was a good captain—did not want to lose him. It was only where the leather was off, that the sheathing was worm-eaten. Where the leather was on, the sheathing was perfectly good; entirely free from worms.

To the eighth interrogatory, saith he refers to the last interrogatory. She was caulked and sheathed on her previous voyage. She was sheathed with pine boards, and felt underneath it, and then leathered entire from her keel to her whales. There was one entire solid body of leather—a coat of leather all over her bottom. It had been thoroughly done.

To the ninth interrogatory, saith she was coppered, as before stated, to light-water mark. The sizes of the copper he cannot tell. Nothing was done to her keel: it was entirely covered with leather and sheathing. Never saw her keel at that period, and cannot therefore state its situation. He means, he never saw the keel naked and uncovered. It had on the sheathing, which prevented his seeing it. In this sense, also, he never saw her bottom. She was hove out for repairs generally. It was not necessary to see her keel or bottom, only to repair those places where the sheathing had become defective.

To the tenth interrogatory, saith, does not know any thing of the matters inquired of.

To the eleventh interrogatory, saith she appeared, in his judgment, well fitted for her voyage. He had been in the habit of fitting out vessels for Mr. Hazard and others, and he deemed the Dawn well equipped. He has had some experience in those matters.

To the twelfth interrogatory, saith, knows Captain Gardiner: has heard nothing against his character: what he knows in favor of it was what he heard from old Mr. Hazard, who told him he wanted to keep Captain Gardiner in his employ, and therefore the ship must be coppered.

To the thirteenth interrogatory, answers, yes!

To the fourteenth interrogatory, he answers, he did not sail in the Dawn in the voyage inquired of, and therefore cannot answer to the matters inquired of: and the fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-eighth, thirty-ninth, fortieth, forty-first, forty-second, forty-third, forty-fourth, forty-fifth, forty-sixth, forty-seventh, forty eighth, forty-ninth, and fiftieth interrogatories, being now read to him, he makes the same answer.

To the fifty-first interrogatory, he saith, is not generally acquainted with mercantile usages and customs.

To the fifty-second interrogatory, saith, does not know any custom material to the plaintiff, nor any fact material to the case, which he has not stated.

To the cross-interrogatories, he saith:

To the first cross-interrogatory, saith she was in the port of New York. She had been in different situations, sometimes on one side of the dock, sometimes on the other; sometimes hove keel out, sometimes not. The parts visible of the main bottom were very inconsiderable, until they made it so by removing the sheathing from some places: had repaired the ship in the voyage previous, as well on this voyage.

To the second cross-interrogatory, saith he cannot answer better than by handing in the bill which he rendered at the time, and which he now exhibits and leaves with the commissioners. He did not furnish the copper, or very little of it. The expense of repairs put on by others he cannot state, and has not the bills. There were many other bills for repairs and outfits, as to which he cannot state any thing. His bill would form a small part of the amount. The bills are from two firms, of each of which deponent was and is a member.

To the third cross-interrogatory, saith he has not answered to the keel being coppered, neither affirmatively or negatively; the question not being comprised in the ninth interrogatory, as he understands it. When he says he did not see her keel, he means it the same since, as when said he never saw her bottom. The sheathing, for instance, would not be seeing her bottom. The keel was covered with leather, and hence could not be seen. It was covered with copper, according to his impression: this is his impression from the fact, that they always coppered the keel. He does not speak from hearsay, nor can he speak positively.

To the fourth cross-interrogatory, answers as to the false keel, he cannot state. It is very seldom they copper the false keel, and thinks it probably was not done. Thinks it likely it was not coppered from its being leathered. Has already answered as to the keel.

To the fifth cross-interrogatory, saith had returned from a whaling voyage; cannot state the place from whence. Understood she had been absent about three years.

To the sixth cross-interrogatory, saith he refers to his answers to the previous interrogatories. The time was when she went upon her previous voyage, of about three years before spoken of.

To the seventh cross-interrogatory, saith it was done by deponent; cannot recollect the expense; can annex a copy of the bills, but has not them with him.

To the eighth cross-interrogatory, saith she was coppered over leather, and the leather had been on since she sailed on the previous voyage. They repaired some part of it. The principal portion, as it was, had not moved.

To the ninth cross-interrogatory, saith there was the examination of her bottom, which he has before stated. It was done by witness, and his workmen were present: can give their names if requisite; the ordinary instruments used by ship carpenters were employed.

Cross-interrogatory, saith the nails were composition, commonly called copper. The sizes for the wooden sheathing was 2½ to three inches long; for the leather about ¾ inches to 1½ inches: cannot annex the bills. Does not think he furnished the nails.

Cross-interrogatory, saith he did not sail in the Dawn, and cannot answer, and the cross-interrogatories, from the eleventh to the twenty-ninth inclusive, being now read to him, he makes the same answer.

Cross-interrogatory, saith has had no such conversations.

First cross-interrogatory, does not answer.

To second cross-interrogatory, answers, no.

Third and thirty-fourth cross-interrogatories, he cannot answer.

Fifth cross-interrogatory, saith he is not.

Sixth cross-interrogatory, cannot answer.

Seventh cross-interrogatory, saith he cannot remember any thing.

To the thirty-eighth cross-interrogatory, saith cannot answer.

To the first further cross-interrogatory, saith when she sailed she was well found.

To the second, third, fourth, fifth, and sixth, further cross-interrogatories, he says he knows nothing, and cannot answer.

And to the cross-interrogatory filed on the 23d of August, 1831, he makes the same answer.

Depositions taken the twenty-fifth day of May, in the year one thousand eight hundred and thirty.

Deposition of Griffith Griffiths.

Griffith Griffiths, of the city of New York, shipwright, aged forty-four years, being sworn, saith:

To the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth interrogatories, he says he knows nothing.

To the thirteenth interrogatory, he saith he knows that the ship Dawn was sheathed with leather: before her departure on her last voyage to the Pacific, her bottom was sheathed all over; it was put on with copper nails in the best manner; she had been sheathed before that time; the leather was at that time sound, as sound as ever it was. They were one or two small places, perhaps of eight or nine inches, torn off in some way. There were mended; helped to mend them himself; he helped in putting the leather on the voyage previous, and helped copper her on the last voyage.

To the fourteenth interrogatory, he knows nothing.

To the fifteenth interrogatory, he says it is not very common to sheath

ships with leather in New York; he has known some three or four: he helped to leather a schooner. It has been generally approved of when done, because the worms will not lay hold of it.

To the cross-interrogatories, he says:

To the first cross-interrogatory, he says he has already answered in part. To the rest he says he is not, to his knowledge.

To the second, third, fourth, fifth cross interrogatories, he knows nothing.

To the sixth cross-interrogatory, he says he understood she came in from a whaling voyage. Don't know how long she had been absent.

To the seventh cross-interrogatory, he saith he cannot fix the date, but it was on her voyage previous to her last. He helped to put on the leather himself.

To the eighth cross-interrogatory, he says Mess. McNamara and Ring put on the sheathing. He knows nothing about the expenses, and has no bills.

To the ninth, he says she was coppered over leather, and for the rest he refers to his previous answers.

To the tenth, he says he knows not of any examination of her bottom at the time mentioned, except to scrape the barnacles off. They drove copper nails here and there where they were wanted. Deponent scraped some off; the other hands helped; scrapers and shovels, and carpenters tools, were used.

To the eleventh cross-interrogatory, he says the nails were of copper, of about an inch and a quarter or an inch and a half long; some were two inches long, called drawing nails, used where the leather was joined together.

To the twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, and twenty-first cross-interrogatories, he says he knows nothing.

To the twenty-second, he saith he has not.

To the twenty-third cross-interrogatory, he has not referred to any such.

To the twenty fourth, he saith he has not.

To the twenty-fifth, he cannot answer.

To the twenty-sixth, he saith the nails were of the size generally used in coppering.

To the twenty-seventh, he saith he does not.

Being examined—the additional interrogatories to be proposed to the witnesses, he answers and says:

To the first interrogatory, he says a ship's keel is securely protected against worms.

To the second, he says he has seen leather on ship's bottoms after a return from long voyages, which had been on during the voyage, and it was not worm-eaten.

To the third, he never did.

To the fourth additional interrogatory, he says he does not think it more securely protected; but the leather keeps the worms out better, and will last longer, than the copper.

To the fifth, copper does generally wear out on a long voyage.

To the sixth, leather continues good, and a perfect protection against worms, on the longest voyages.

To the seventh, he helped put it on; was one of the hands: it was cut into sheets, and drawn on tight, nailed fast, pretty much the same as copper is done.

To the eighth, he says, if the false keel was knocked off, and the forefoot injured of a coppered ship as spoken of, the worms would have a better

chance than if the ship had been leathered and not coppered: copper would not form as good a protection from the rocks as leather, though neither would stand long

To the ninth, does not believe that the keel or bottom of the Dawn would have been injured by the worms, if she had not struck on rocks.

To the tenth, he does not.

To the first additional cross-interrogatory, he saith he helped to leather a schooner some time before the Dawn: when she came back the bottom was full of barnacles, but no sign of a worm in it: he also helped to overhaul the Dawn as before stated, and her leather was sound.

To the second, he saith, thinks he would be as sure of it as that the vessels he has spoken of came back with the same keel: the voyage of the schooner he does not know about; that of the Dawn was a whaling voyage.

To the third, he saith has known three such vessels; one to Jacob Barker, one to Mr. Hazard; don't remember the names of the schooner or the other vessel: believes it was a brig, but dont know her owner; did not work on her: dont know what voyage the other vessel went on.

To the fourth, he saith the use has been discontinued: he believes the general reason is, that it gets foul; gathers so many barnacles.

To the fifth, he saith he refers to his former answers, and adds that he only knows Captain Gardiner, the captain of the Dawn.

To the sixth, he saith he never saw any run on rocks; saw them only on their return. All he knows about it, is that he worked on two vessels after their return, and found the leather good.

To the seventh, he answers, no.

To the eighth, he says the keel was coppered over the leather.

To the ninth, he does not.

GRIFFITH GRIFFITHS.

Deposition of James Karley.

James Karley, being sworn, saith, he resides in New York; by occupation a shipcarpenter, and of forty years old and upwards.

To the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth interrogatories, he says he knows nothing.

To the thirteenth, he says the Dawn had sheathing of leather on at the time spoken of, and was then coppered. The leather was cut in sheets, then nailed on upon one side of her keel, and sheathed from that up; when the ship was winded, that is righted up and hove on the other side, they took the leather which then hung down; brought it over the keel, and nailed it up on the other side; then went on sheathing till they got it up. She was leathered nearly or quite up to her bends: the leather appeared to be very good and whole, except in some places where it was rubbed off; principally where they got the whales along side.

To the fourteenth, he knows nothing.

To the fifteenth, it is not usual; he has seen only two, the Dawn and the schooner. Does not think that leathering is approved of, it fouls so soon; gets grass and barnacles on it; that is the only reason he knows of against it.

To the first cross-interrogatory, he has already answered in part; to the residue he says he is not.

To the second, third, fourth, and fifth cross-interrogatories, he knows nothing.

To the sixth, he says he understood the Dawn had been gone three years after the leather was first put: it was on a whaling voyage.

To the seventh, he saith he was one of the hands to put on the leather. It was done previous to her sailing on the voyage before her last; cannot fix the dates.

To the eighth, Messrs. McNamara and Ring put it on. Does not know the expense, and has not the bills.

To the ninth, the ship was coppered over leather: it had been on for one voyage.

To the tenth, the bottom was looked at when the leather was off, and where the leather wanted re-nailing, it was done. Hands were there; and perhaps the captain's and Mr. Hazard's carpenter's tools, &c. were used.

To the eleventh, the nails were copper or composition, an inch and a quarter to an inch and a half; the sheathing nails for the corners were two to two and a half inches long.

To the twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, he knows nothing.

To the twenty-second, answers, no.

To the twenty-third, he has not referred to any.

To the twenty-fourth, anwers, no.

To the twenty-fifth, does not answer; never was in her on a voyage.

To the twenty-sixth, answers, yes.

To the twenty-seventh, answers, no.

Being examined upon the addition interrogatories to be proposed to the witnesses, he says:

To the first interrogatory, he says it is.

To the second, he has seen leather on the bottoms of the Dawn, and a schooner, after their return from long voyages, and it was not worm eaten.

To the third, he answers, no.

To the fourth, copper is equally good, and, in his opinion, no better than leather; would as leave have copper for his part: it can be laid smoother on.

To the fifth, it does.

To the sixth, the leather of the Dawn came home in perfect order, except where the taking fish along side had worn it off. Has seen ships come with all the copper off, except where the nails held it.

To the seventh, he helped as a hand in putting it on, and refers for the rest of the interrogatories to his former answers.

To the eighth, he says a leathered vessel would not be likely to be cut as much by running on rocks: the leather would give a little.

To the ninth, he answers he don't think they would; don't see where they could get at her.

To the tenth, he knows nothing.

To the first additional cross-interrogatory, he says, never saw any worms go through leather.

To the second, he says, understood from the captain of the Dawn that it was the same leather; supposes the other was the same; thinks the schooner's voyage was to Port Mahon.

To the third, he has known only three—one belonged to Jacob Barker, a schooner, the Dawn to Mr. Hazard, and the owner of the other vessel he does not know—believes it was a ship. The schooner's voyage was up the straits. Does not know the owner of the other: believes her voyage was a whaling one.

To the fourth, the use of leather has been discontinued; knows of no other reason than their getting so foul that vessels cannot get through the water: injures their sailing.

To the fifth, refers to his former answers. Captain Gardiner commanded the Dawn: don't remember the names of the others.

To the sixth, he knows not personally of any ship covered with leather running upon rocks; has been in a coppered ship which did so. The copper came up on the false keel: was knocked off: refers for further answer to his former answers.

To the seventh, he answers, no.

To the eighth, he says it was coppered down to the shore on false keel.

To the ninth, he answers he does not.

JAS. KEARLEY.

Plaintiffs' interrogatories to Elizur Foster, a witness.

1. Are you acquainted with Captain Gardner, and how long have you known him?

2. Were you acquainted with the ship Dawn in the fall or winter of 1827, and was she at that time in the port of New York?

3. In what employment were you engaged previous to the sailing of said ship?

4. At what place or dock was the Dawn, and in what situation was she at the time you were so employed as stevedore?

5. Were they at that time engaged in coppering said ship? what part of her, and how far had said ship been coppered, as you know?

6. Did you see Captain Gardner at or shortly previous to the time when you saw them coppering the keel? when was it, and what directions did he give? and was Captain Gardner present at the time they were coppering the keel?

7. Had they commenced coppering the keel at the time Captain Gardner or Mr. McNamara left, and how long, and how far had they proceeded in coppering the keel when you left?

8. Was any part of the sides or bottom of the keel coppered at the time you left? Did Mr. McNamara leave soon after Captain Gardner, or how otherwise?

9. When did Captain Gardner employ you to stow the ship? When were you to commence working in that business?

10. Did you, after the ship was prepared to go to sea, enter into any arrangement to go out in her, and in what capacity?

11. When did the ship sail, and did she, or not, go to the Cape de Verds? Did she meet with any accident there, whereby her keel was injured? State particularly.

12. The piece which floated up, what did it consist of? Was there more than one piece? if more than one, were they together? which was the largest?

13. Of what part of the vessel was the piece, and of what part was the oak? how large a piece was the oak?

14. Did the vessel make a fair voyage to the Cape de Verds?

15. Did you continue in the vessel until the termination of the voyage? Where did it terminate, and for what cause?

16. Did you stow the vessel, and in what manner, and did you, with those in your employ, do the whole work?

Cross-interrogatories by Defendants.

1. When did you arrive in the United States after leaving the ship Dawn?

2. Where have you been since that time, and in whose employ?

3. For what purpose did you come to Boston, and at whose request?
4. When are you going to leave Boston, and why?
5. Why do you not remain here till the trial of the suit?
6. What business are you engaged in which calls you home?
7. Did not your family know that you where coming to Boston?
8. Did not Mr. Barker tell you that he would inform and take care of them?
9. Did you receive any money when you came away? if so, how much?
10. Did any body eugage to pay your expenses? and if so, what were you to receive?
11. Had you shipped on board the Florida?
12. When did you ship on board the Florida, and for what voyage?
13. In what manner did you obtain a release from your engagement on board the ship Florida?
14. What wages were you to have on board the Florida?
15. How much did Mr. Barker agree to give you for coming to Boston?
16. Did he not engage to provide for your family?
17. How long have you known Mr. Barker?
18. When did you last see him, to converse with him, before he came on board the Florida for you?
19. Had you ever conversed with Mr. Barker before that time? if o, when, at what place, and how often?
20. Had you ever conversed with Mr. Barker before you shipped on board the Florida? and if so, when, and at what places, and how often?
21. Have you at any time seen, or heard read, any deposition or statement made by any person respecting the loss of the ship Dawn?
22. Have you ever conversed with any person or persons respecting the loss of the ship Dawn? and if so, when, and with whom?
23. Have you ever conversed with Mr. Hazard on the subject?
24. Is that the only conversation you have had with him, or with any one on his behalf, respecting the loss of the ship Dawn?
25. Have you never conversed with Captain Gardner on this subject? and if so, when?
26. When did you last see Captain Gardner?
27. Have you ever seen any of the officers of the Dawn since your return to America? If so, which of them, and when?
28. Were you at work on the ship Dawn at the time she was coppering?
29. Where were you at work when the ship was coppering?
30. On what day of the week was it, when you suppose the keel was coppered, as you allege?
31. What do you mean when you say in answer to the 9th direct interrogatory, that the copper had been nailed, and turned over to nail on the keel on the opposite side? Do you mean that it had been nailed on one side of the keel, and turned round it, so as to be nailed on the opposite side?
32. Did Captain Gardner leave the ship at the time you stated you saw the keel in the preceding question, or before, or afterwards?
33. How long did you stay on the stage, and when did you next see the vessel, and in what condition was she then?
34. How many hands were at work on her bottom at that time?
35. Was the copper on the bottom of the ship, on that side, where you saw the keel coppering?
36. On what part of the side was the copper which you saw?

37. Who else, besides Mr. McNamara, was present on the stage when Captain Gardner gave the order stated in your answer to the 6th direct interrogatory?

38. How was the keel coppered? State particularly how it was done.

39. Was the false keel coppered also?

40. Did you see the false keel?

41. Did the copper go all round the bottom of the whole keel as the vessel then lay, so that when she was righted the copper was under the whole bottom of the vessel next the water?

42. When in the act of coppering the keel, did you, or not, take notice of the false keel?

43. Did you stay to see the keel coppered?

44. Was there any sheathing on the keel when they put the copper on?

45. Was the vessel sheathed under the copper?

46. What was she sheathed with? Describe it.

47. Did you see more than one side of the ship when they were coppering her? and if so, which side?

48. Did they begin to copper from the top or bottom?

49. Where were you at the time when you say they were coppering her keel? State particularly.

50. Who were the carpenters employed in that work?

51. Where are the persons who were employed in putting the copper on the keel?

52. What hour of the day was it?

53. Who was present, besides the carpenter at work upon her?

54. Did you see them when they began to copper the keel, as you have stated, and when they finished?

55. How long were they about it?

56. When was the vessel righted?

57. How far had they coppered the vessel when Captain Gardner had to leave on business, as you have stated?

58. Had the keel been coppered on the other side?

59. When you saw the larboard side, was it before or after you saw the starbord side?

60. What was the condition of the larboard side, when you saw that?

61. In what part of the vessel were you when the piece of the keel or false keel floated up?

62. Did you see the piece? Or did you merely here it described?

63. Was there more than one piece?

64. How were the pine and oak fastened together? was one forward or on top of the other?

65. Had you any thing to do with it? Did you handle it?

66. Was there any thing else on the piece of wood which floated up, except the copper?

67. How much copper was there on the piece of pine? Describe it exactly, as nearly as you can.

68. Who took it on board?

69. What was the reason that the ship was condemned in Honololu?

70. What was the condition of her keel, and did any copper remain on it?

71. Did the nails remain in on that part of the keel when the copper was off?

72. On what part of the keel did the copper remain on when you saw it at Honolulu?

73. Was the copper immediately above the keel in good order?

74 Was any of it off? if so, from what part of the bottom, and how much of it?

75. What was the condition of the sheathing under it?

76. Was that which was very fair spruce or pine?

77. How much of the sheathing remained on the keel?

78. What was the condition of the keel when the copper was off? Was it sound or defective?

79. What was the condition of the stern and stern post?

80. What was the state of the plank on her bottom?

81. Was her garboard streak in good order?

82. Did she leak after her cargo was taken out, and before she was condemned? If yea, how much?

83. What repairs did she need at Oahee, if any, where she was condemned?

84. To what port did the ship proceed after leaving the Cape de Verd islands?

85. Was any examination made of the ship there to ascertain the damage; and what was it?

86. You arrived in Nantucket in March last you say—how soon did you go to New York after that; and how long did you remain there?

87. Were you paid your wages at Oahee when you left the vessel, or not till after your return?

88. Had you any portion of the oil at Oahee?

89. Where was your family at the time of your arrival in the Rambler?

Deposition of Elizar Foster.

I, Elizar Foster, of the city of New York, mariner, of lawful age, do testify and say, in answer to the interrogatories proposed by the plaintiff:

1. Answer. I am well acquainted with Captain Gardner, and knew him for two years before I sailed with him in December, 1827.

2. I was acquainted with her at the time she sailed from New York on her last voyage.

3. I was employed as a stevedore.

4. She was in a dock at the foot of Pike street, in New York, with thirty or forty men at work on her, she being on her beams end. They were not all carpenters; some were riggers: I am not certain about the number of men.

5. At that time they were in the act of coppering one side of the keel; the other side of the vessel had been coppered when she was hove out on the other side.

6. Captain Gardner, while they were coppering the keel, had to leave on business, and he left orders with them to have them get on with it as fast as possible, with Mr. McNamara, the head carpenter, who was on the stage when Captain Gardner left.

7. The copper had been nailed on, and turned over to nail on the keel on the opposite side. They were preparing to finish coppering the keel when Captain Gardner left: I remained about fifteen or twenty minutes after Mr. Gardner and Mr. McNamara left the vessel. The carpenters were all at

work on her at the time I left, but I cannot recollect how far they had finished coppering the keel.

8. Mr. McNamara left soon after Captain Gardner: when I left the vessel, they had commenced rolling over the copper, and nailing on the opposite side: I cannot say what was done on the other side.

9. Captain Gardner engaged me to stow the ship: I engaged to stow her as soon she was righted: Captain Gardner expected me to commence as soon as the ship was righted, but I did not.

10. I engaged with Captain Gardner to go out with as a boat steerer, after she was fitted out for sea, and I went out with him.

11. The ship sailed in December, 1827: I cannot recollect the day. We were off the Cape de Verds, where we struck on a rock, which was not known to us at the time, a piece of the ship's false keel or of her keel, three or four feet in length (but I cannot be certain of the length,) floated up at the time; my impression is that there was a piece of her keel which came up.

12. It consisted of pine and oak, and the pine was coppered: the pine and oak were fastened together: the pine was the largest piece.

13. The pine I judged to be a part of the false keel, under the keel, and the oak a part of the keel: the oak was a splinter, a very small piece of timber.

14. She made a tolerable fair voyage, but I think she had some heavy weather.

15. I continued in the vessel till she was laid up in Oahee: I left her there, and returned to Nantucket in the ship Rambler, Captain Worth.

16. I did not commence stowing the ship at New York: when I went on board of her, a few casks were in on board. I had all the casks which were bad broke out and stowed others in their places. There were casks on the ground tier filled with water to ballast the vessel, which casks were afterwards to be filled with oil when needed.

In answer to cross-interrogatories:

1. Sometime in the month of March last, in the Rambler, Captain Worth, belonging to Tuck and Mitchel. I was on board the Rambler, except for a short period, from the time the ship Dawn was laid up, till I arrived at Nantucket, and was engaged in whaling.

2. In the employ of Cyrus Holmes, on board the ship Talma, a New Orleans packet, from New York.

3. I was bound to New Orleans in the Florida, and was taken out of the vessel and put on board a steamboat for Boston, to state what I knew about the Dawn. Mr. Jacob Barker engaged me to come on, and came for me on board the ship. The Florida was calculated to sail the day I left her.

4. I wan't to go as quick as possible: my business and home are in New York.

5. Because my business calls me home.

6. I have a family to take care of: I have got to go home to engage in some business to take care of them. I left them with nothing, as you may say, expecting to return to them on the day I embarked for Boston.

7. I do not know that they know where I am.

8. I can't say that he did: when I was getting on board the boat, I asked him if he would do it, but I did not get an answer from him, I was in such a hurry.

9. I received none.

10. Coming off in the boat, Mr. Barker said my expenses should be [illegible] but did not say how much.

11. I had shipped.

12. Two or three days before I came to Boston. The Florida was bound to New Orleans.

13. I spoke to the Captain, and told him Mr. Barker wanted me to go to Boston as a witness, and I left the ship.

14. Twenty dollars a month.

15. Not any thing.

16. He did not agree to supply my family: it was a minute's work. I did not have time to talk with him. I told him I had left my family no money.

17. I sailed, when I was a boy, in a ship belonging to him, but never had any particular acquaintance with him, except by sight: I was once paid off in his office.

18. I saw him in the street a day or two before he came on board the Florida. He wanted to know if I would go to Boston. I told him I was engaged. He said I was wanted as a witness, and he would like to have me go on. I told him I was perfectly willing to do any thing I could, if I could leave the ship.

19. I had seen him once or twice before, on board the Florida. I was called out of the hold by the Captain, to Mr. Barker, and had no time to converse with him. I don't know what passed, except that he wanted me to come on to Boston.

20. I never conversed with Mr. Barker before I shipped on board the Florida. I knew him by sight. I believe it was the second day after I shipped, that I first saw Mr. Barker on board; and Mr. Barker inquired if I was such a man, and I said I was.

21. I have not.

22. Mr. Selden has asked me to-day if I was particularly acquainted with the ship, and I told him I was. I have conversed with no one else in particular, except sea-faring people in different ships in which I have been.

23. I saw Mr. Hazard for about an hour after I came home last spring. I conversed with him about the ship, and how the business was transacted, and so forth. I had just got home, and was in a hurry, and cannot recollect exactly what passed.

24. I do not recollect any other conversation with Mr. Hazard, or any other person in his behalf, except Mr. Selden, to-day, though I might have seen a dozen other people.

25. I saw Captain Gardiner in March last: I asked him how the oil sold, but had no conversation with him about the ship.

26. In March last.

27. I have not seen any except the Captain.

28. I was not.

29. I do not know whether I had any work to do or not. It is a long time to recollect. I was passing and repassing by the vessel every day at the time she was coppering.

30. That is more than I can say any thing about.

31. I mean that the copper had been nailed on one side of the keel, and turned round it, so as to be nailed on the other side. I knew nothing about one side of the keel. I saw the copper preparing to be nailed on the other side, as if the opposite side had been nailed.

32. I think Captain Gardiner left the ship when she lay on her beam ends, at the time he gave directions to Mr. McNamara. When he left,

they had begun to bend over or nail the copper on to the keel. It is a long time to recollect. I cannot say whether they had begun nailing or not.

33. I was on the stage fifteen or twenty minutes, probably after Captain Gardiner left. I next saw the vessel in the course of the same day, when she was partly righted. I cannot say the time of day.

34 The number I cannot tell: there were probably thirty or forty men at work on the ship.

35. There was some copper on that side of the ship which was hove out; but how much I cannot tell.

36. I cannot tell the particular place, any more than it was on the ship's bottom.

37. I do not know the names of the people who were at work there.

38. They were in the act of doubling over the copper from the lower side of the keel, to nail it on the upper side.

39. The copper was outside of every thing.

40. I did not, before the copper was on.

41. One side of the keel I did not see. As to the side I did see, that was coppered next to the water. The copper went outside of the whole keel, including the false keel.

42. The false keel I could not see: it was covered with copper.

43. I did not stay to see it finished, not entirely.

44. That is more than I can tell. I could not see the wood after the copper was over it.

45 I saw them putting sheathing on to the ship before I went on to the stage, as I was passing.

46. They looked like spruce or pine boards, as I was passing: I could not tell in particular.

47. The side of the ship I saw when she was hove down, and they were coppering her. It was the starboard side that I saw: she was on her larboard side when I was on the stage. I saw them as I was passing, putting copper and sheathing on the other side.

48. I cannot tell where they commenced coppering. I saw copper on one side of the keel, and there was some copper above it.

49. I was on the stage.

50. Mr. McNamara is the only one whose name I now recollect.

51. Cannot say.

52. I cannot tell the hour.

53. I do not know any more than Captain Gardiner.

54 I saw them in the act of coppering the keel. I did not see the beginning or end of the work.

55. I do not know.

56. I cannot tell the day or hour.

57 They were in the act of coppering the keel. I think the copper was on the whole length of the keel at that time, when he left.

58. I did not see the other side.

59. When she lay on the starboard side, I saw the larboard. It was the starboard side that I saw first.

60. They were in the act of coppering the keel; no more than that: I saw the sheathing well on at that time.

61. I was not on board the ship.

62. I saw the piece for six months afterwards.

63. There were two pieces of wood attached together.

64. One was on top of the other. The oak appeared to be the underneath part, which was attached to the vessel.

65. I had hold of it several times. It passed and repassed on board the ship.

66. Nothing except the copper nails, to my recollection.

67. I can't tell how much there was. It might be as big as your two hands. It was rolled up; nobody could describe it.

68. I cannot tell who was in the boat.

69. I believe the principal thing was because they could not get timber to repair her.

70. There was a little, more or less on it.

71. There were more or less nails on her keel where the copper was off.

72. On different parts; I cannot tell particularly.

73. It was not.

74. It was mostly off from most part of her bottom: I cannot tell exactly what part.

75. Some of the sheathing was off; some which remained was very fair; the other, I cannot tell what it was.

76. I believe it was spruce, but cannot tell certainly: after it has been on a ship's bottom so long, it alters its color: I am not acquainted particularly with timber.

77. Very little: at least there was more or less, as near as I can recollect: it is a long time, and I have been knocking about.

78. It was defective, more or less, where the copper was off.

79. They were both defective.

80. They appeared to be sound: I saw her in October, 1831, at Oahee: she was a store ship, and did not leak any at that time.

81. I cannot say whether it was defective or not.

82. Only when she was hove down on her beam ends, as I know of: at any rate she did not make any water a twelve month ago.

83. Her keel was affected, I mean bad, and her stem and stern; and there was not fit timber enough to repair her; at least that was the talk among the carpenters: I know nothing about it.

84. To St. Salvador's.

85. A man went under her bottom to examine her.

86. I went from Nantucket for New York in eight or nine days after my arrival: I remained in New York about a week or fortnight, and then returned to Nantucket to settle the voyage: thence I went to New York, and made two voyages in the Talma, and afterwards entered on board the Florida: I was in New York about ten days before I sailed in the Talma, when I first joined her.

87. I have never settled my wages: Mr. Hazard told me he thought I was in debt to the ship, and I have never troubled my head about it.

88. I had not, nor since.

89. At No. 112 North street, New York.

Interrogatories by Plaintiffs.

At what time did you leave your home on the morning you departed for Boston?

Answer. At five of the clock, A. M.

Did you return home? In what manner did you come to Boston? State particularly.

Answer. A small boat came along side the Florida, and took me on board the steamboat, in the fore part of the day, not later than nine of the clock. I did not see my family after I left them at five o'clock: I tied up a few things, and the clothes I have on, when I went on board the steamboat: I had no communication with my family, and made no provision for them.

Did you know, when you left home, that you were to go to Boston? Who took you in the steamboat?

Answer. I did not know that I was going to Boston when I left home in the morning: Mr. Barker was in the small boat which carried me to the steamboat.

How long did you see Mr. Barker on the morning before you got on board the steamboat for Providence?

Answer. Say fifteen or twenty minutes.

In what capacity did you ship in the Florida?

Answer. As second mate.

By same. Was there any leather on the bottom or keel of the Dawn, as you know, at the time she sailed from New York on he last voyage? (Objected to by defendants as leading the witness.)

Answer. I cannot say: as nigh as I recollect there was leather under the copper, but I never saw it.

By same. Was your attention ever particularly called to examine the keel or bottom at Oahee? or were surveyors selected to examine her after you arrived there? (Defendants objected to the first clause as leading the witness.)

Answer. I never had occasion to pay particular attention to it at Oahee: surveyors were called at Oahee: I was on the carpenters' stage, but saw nothing in particular.

By same. Did Captain Gardner ship his oil at Oahu? If yea, in what vessel? Did you assist in stowing it?

Answer. He shipped his oil on board the brig Andes: I assisted in stowing it myself.

By same. What was the condition and quality of the casks containing the oil?

Answer. The casks generally were very good.

By same. How long was the vessel at Oahee, before she was examined by the carpenters?

Answer. I cannot tell how many days: immediately after her arrival a survey was called.

By same. What attention was paid to coopering and stowing the casks of oil shipped in the Andes?

Answer. The cooper was constantly employed with the casks, while stowing on board the Andes.

By defendants. On what terms did you ship for the voyage of the Dawn?

Answer. The eighteenth lay.

By same. What is your age, and how long have you followed the seas?

Answer. I am about thirty-two or three years of age, but do not rightly know. I have followed the seas, since the year 1816.

District of Massachusetts, county of Suffolk: On the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and thirty-two, the aforesaid deponent was examined, and cautioned, and sworn agreeable to law, to the deposition aforesaid by him subscribed. Taken at the request of Samuel Hazard, administrator, to be used in an action of the

case now pending between him and the New England Marine Insurance Company, before the Circuit Court of the United States, holden at Boston, in the district of Massachusetts, in the first circuit, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and thirty-two. Also, in another action of the case, pending in said court, between said Hazard, administrator, and the Boston Insurance Company, and both the adverse parties were present. The deponent living in the State and district of New York, and at a greater distance from the place of trial than one hundred miles, and being about to go out of said district of Massachusetts to said district of New York before the time of trial of said causes, is the cause of taking this deposition.

Soon after the cross-examination of said witnesses commenced, Dudley Selden, esq., counsel of plaintiff, inquired of the defendants' counsel if they should object to the deposition being used in the trial of said causes. The defendants' counsel replied that they should object, because there was no legal cause for taking the same; and being requested by plaintiff's counsel to state their objections precisely, they stated the following: The defendants object to the competency of the deposition, as the witness is within the reach of the process of the court which is now sitting, and the actions are to be tried at the present session: the case is not within any of the reasons assigned in the statute authorizing the taking of depositions. The defendants said they made no objection to the examiner not being within the description of persons authorized by the statute to take depositions. The plaintiff's counsel then claimed a right to resume the examination of the witness in chief before the defendants had concluded the cross-examination, in order to interrogate him as to the circumstances under which he left New York, and the reasons which obliged him to return to that city, and prevented his remaining in Boston to attend court as a witness. The examiner considered that the plaintiff had not this right according to the practice of Massachusetts, but must reserve his further examination until the defendant had concluded the cross examination, and the defendant accordingly proceeded in said cross-examination.

And thereupon the plaintiff rested.

The counsel for the defendants, to sustain the issue on the part of the defendants, called as a witness Josiah Bradlee, who, being sworn, deposed that the letter next herein set forth was received by him from the insured, and left with the underwriters at the time the policies were issued; and which letter is in the words and figures following:

Defendants' evidence, viz. Josiah Bradlee and Thomas Hazard jr.'s letter to Bradlee and Co.

NEW YORK, 12 Mo. 22, 1827.

Josiah Bradlee & Co.

RESPECTED FRIENDS: My ship, the Dawn, of New York, Henry Gardiner master, is now nearly ready for sea, and will probably sail in the course of next week on a whaling voyage to the Pacific ocean, and elsewhere. I wish you to have twenty five thousand dollars insured for my account, on the ship and outfit, the ship valued at fifteen thousand dollars, and the outfit valued at ten thousand dollars, each subject to its own average—the outfit to be transferred to my share of the oil, which will be about two-thirds of the oil, as fast as it shall be obtained; the oil valued at sixty cents a gallon. If any part of the oil should be sent home by any other vessel or vessels, that part of the oil not to be deducted from

the sum insured on the outfit. Our ships sometimes take oil on their outward passage, and wish to send it home: therefore you will please to have it stipulated in the policy for liberty to do it, and also for liberty to stop from time to time to procure refreshments, as is usual and customary on such voyages. This is the same ship that you had insured for me in Boston, some years since. I will only observe, that I believe her to be one of the strongest and best ships in the whole fishery: she has been newly coppered to light water mark, above which she is sheathed with leather to the wales, and fitted in every respect in the best manner, and commanded by an experienced, capable, and prudent master, which entitles her to be insured at as low a premium as any ship in that business. You got her insured for me the last time, on a similar voyage, against all risks, for six per cent, although I understand that premiums have risen a little in Boston. I can but hope that you will be able to get this insurance effected at six and an half or seven per cent.—indeed I should not be willing to give more than eight per cent. Hoping to hear from you soon on the subject of this insurance, I remain, with great respect, your assured friend,

THO. HAZARD, JUNR.

The counsel or the said defendants, further to sustain the issue on their part, produced a deposition of Captain Henry Gardner, taken previous to the commencement of this suit, and to which the above recited protests, with the affidavits accompanying the same, were attached, and also the deposition of Frederick Barlow; which depositions, protests, and surveys, are in the words and figures following:

Deposition of Henry Gardner.

I, Henry Gardner, of Southampton, on Long Island, in the State of New York, master mariner, on oath, depose and say, that I was master of the ship Dawn, belonging to Thomas Hazard, jr., of the city of New York, on the twenty-ninth day of December, in the year 1827, to the Pacific ocean, whaling. Nothing particular occurred till I reached the Cape de Verde, excepting that I had strong breezes, and lost a boat from our quarter, off the Canary Islands. At the Cape de Verde I went in for the purpose of getting some ballast. I run in six or eight miles to the north of Port au Praya, and sent my boat ashore to get ballast. The ship was crank from the leaking out of my water on the ground tier. The mate went in the boat, and had probably got half way to the shore. I then wore the ship round to stand off: when before the wind, heading directly off, she struck a rock, and there she hung and pounded from five to ten minutes, until she wore half round, her stern off the shore, when I hauled her sails aback, and she backed off immediately. The second mate (I think it was he) observed something floating alongside from under the bows. I ordered him to lower the boat and pick it up, and bring it aboard to see what it was. He did so, and found it was a splinter of the gripe or stern, about two feet long, with about ten feet of the false keel. The mate who went for the ballast, finding no place to get it, went round with his boat into the harbor, and there he went ashore to inquire if ballast could be got there, and if the harbor was a safe place to come in. I directed the mate to the American consul, but he found none there at this time. I laid off and on until the mate came on board. He informed me that it was a good place to come in with the ship, and that it was a good place to get ballast in plenty, and with safety. I went in then and anchored: this was on Saturday, in the afternoon. I went that after-

noon ashore to get boats to get ballast with the next day, and hired some launches and large boats. The next morning I sent the mate ashore to market, and went myself in a boat along the shore, to see where I could get ballast handily; when I came back, the mate had not returned. It being Sunday, and nobody to work on the shore, I concluded not to ballast, and told the second mate that he might go ashore with his boat and crew. They went down to clean themselves below, and I was walking the deck: there was a considerable ground swell, and I discovered the ship was adrift. I then called up the crew, who were below, and let go the other anchor, which brought her up. I immediately went ashore to get a boat to weigh the anchor, knowing I could not weigh it with my own boats. I hove in the chain, and found the ring was gone, for I brought it up. Then I got a boat ashore, came off, and attempted to weigh the anchor, and could not; I then went ashore and got another boat, making two, but I could not get the anchor at all. I then carried my stream anchor as far as I could ahead, and laid at that and my other bower. The next day the rollers set in very heavy with a fresh breeze, but no gale; the rollers set in so, I could not ballast, and I allowed no boat to go ashore, but staid watching the ship. About one o'clock, when I came up from dinner, I found she had drifted again, and was riding by the hawser of the stream anchor; the other anchor was dragging; she had drifted some, and the rocks were about fifty yards astern, the wind blowing directly on to them; I made sail, cut the hawser, and stood out to sea. I hove up my anchor (the starboard anchor) and found one fluke gone. After I got out to sea, I sent the mate in with the launch to heave up the stream anchor and cable; and he did so, and brought it aboard. I went ashore, and tried to get the captain of the port to weigh the anchor first lost, (the larboard one:) he said he had no boat that could do it then, if at all; he did not think it could be got, certainly not till the rollers were done, which would not be for a week or fortnight. I went myself to the anchor, and sent a man down to put a new buoy rope on to it. I then put a buoy on to it, and left it. I then beat off and on the port for two days more; it blew strong; there was no anchor there that I could get, and I did not conceive it prudent to remain, and bore away. While there, the first night in, I sent a man down to examine the bottom of the ship; he said the copper looked fair, no plank was hurt that he could discover, and no damage done to the bottom, except the small piece of the false keel, which had come up; nothing more than usual occurred till I arrived in St. Salvador, March tenth, 1828. I went ashore while the ship was laying off and on, got an anchor, went off with it, and brought the ship to an anchor. Nothing occurred there, except I got what ballast I wanted, and a couple of anchors. I sent down and had her bottom examined again, and felt confident myself, that she would go the voyage. The bottom was examined by a man diving down. Then I put to sea again, and proceeded from St. Salvador, Wednesday, nineteenth of March, round the Cape of Good Hope. On the fifteenth of May, 1828, I had a tremendous gale of wind; I was scudding under a close reefed main-topsail and foresail, about one o'clock at night, as near as I can judge, a white squal struck us, and threw her nearly on her beam ends; her starboard gunwale and bulwarks under water, so that the quarter boat which was above the bulwarks, outside rolled in, and was dashed to pieces; we split one foresail, and carried some ropes away, which I repaired. Nothing material occurred after that till about the seventh of June, I made Java-head, and that day entered the straits of

Sunda, and June the eleventh, anchored at Angier, in the straits of Sunda. On the twelfth, I left and went up to the China seas, through the straits of Banca. The third of July, I made the island of Formosa, and there commenced taking whales; then proceeded towards Japan. Fourteenth of July, I was off Lutchoo islands; the sixteenth of August, I was off Bonen islands. Nothing occurred more till I arrived off Sandwich islands, at the harbor of Byron's bay, so called on the charts. Twenty fourth of November, while I was in this harbor, which is called Hido, I employed an Indian to go down and examine the bottom: he reported, as the others did, that the copper looked fair. We left there the twenty-sixth of December; the twenty-ninth, I was off Whahoo, and went ashore, but did not anchor the ship laid off and on. On the second of January, I went to sea, and cruised among the islands, until, on the nineteenth of April, I went in and anchored at Guam, one of the Ladrone islands; there I got water, wood, and refreshments, and sheathed a piece under the bows. The seventh of May, we started from thence; the sheathing done here took my mates and carpenters about two hours before breakfast. On the twenty-first of May, I was again at the Bonin islands; then I cruised on the coast of Japan for whales: nothing particular occurred till the thirteenth of September. The following is a copy of the entry in the log-book: "Remarks—On Sunday, 13th September, fresh winds from N. E., and rugged: stowed 23 bbls. head in the after-hold: employed trying. At midnight, a heavy gale: put 20 bbls. of oil down the blubber room: one cask got adrift, went overboard, and took one man with it, but fortunately saved the man; the wind came in squalls with rain, the sea running high and sharp: took in the lee-topsail, split the f. sail, and f. t. mast staysail: our oil in the starboard bow got a-drift, stove two 4 barrel casks; by 5 in the morning we got the casks about deck secured. Latter part a severe gale, with a head sea: at six A. M., split the mizen stay sail: laying under bare poles, washed away our waist boards, the ship leaking from 800 to 900 strokes per hour. So ends these twenty-four hours, with heavy gales and steady rain."

Mr. Derby, counsel for samuel Hazard, esquire, executor, objects to the insertion of the extract from the log-book.

The gale was tremendous; at the first of the evening it was pleasant weather, and had a quantity of oil on deck, and blubber in the hatchway: there was more than a hundred barrels of oil on deck, in different sized casks, and five or six large casks of head matter untried: it was a pleasant moonlight evening, but came breezing on; at eight o'clock I went below, when the watch was set, and gave the mates orders to let me know if there was any change in the weather: I sat reading or writing till eleven, when I found it was breezing on: I had the main-topsail, which was close reefed, taken in: I wanted to lay as still as possible, to save my oil: it then came on very violently, faster than I could take care of things: I ordered the fires out, and the hatches down, and attempted to take the foresail in, but I could not; it split all to pieces, so that I never mended it again. Little after that I split the fore-topmast staysail: after this I was engaged in all parts of the ship, in lashing oil, &c. &c., and I lost off the decks more than fifty barrels of oil: the sea washed over us so that what was not washed out was filled with salt water, and ruined: some were stove, so that, including blubber and all, I calculated I lost fifty barrels by the storm. It blew tremendously; it was the severest gale I ever experienced at sea; it was not a gale, it was a hurricane. There is in the log-book an entry, on the fourteenth, that we lost forty barrels of oil. I set a storm mizen-stay-

sail on the thirteenth: two hours after the storm commenced, it was my opinion that the ship would founder. On the fourteenth, the log book says as follows. "Commences with heavy gales, and a large ugly sea, with rain, lying under bare poles, heading to the westward; middle part a little more moderate; latter part, fresh winds, onbent the F. sail, and bent another, and started the try works: we find we had lost forty barrels of oil in the last gale: set the m. t. sail and f. sail; lat., by observation, 29° 55'" From the time of the gale it was my intention to head to the eastward, and go to the Sandwich islands as quickly as possible. After this it was principally with good weather, and it was with the utmost regret that I had to leave the ground: I whaled all along the passage to the Sandwich islands: on the eleventh of December I reached Whahoo; I went in and anchored. I then called a survey on my ship, the day after my arrival, I believe: the American consul, Mr. Jones, appointed it. Their names were, Lloyd Powers, master of the ship Parthian, I think, of Boston; William Blanchard, master of the ship Honqua, of Boston; J. W. Cheever, master of a barque, from Boston, whose name I do not recollect; and Frederick Barlow, James Robinson, Zacchea Rogers, ship wrights; Barlow and Robinson belong there, and Rogers, I believe, belongs there. There were three surveys here at Whahoo: the papers which I here produce, are the original surveys which I sent to my owners. The second survey was, the said William Blanchard; John Meek, master of the brig Waverly, of Boston; Manual Antony Somes, an American, now residing at Manilla, master of a brig there, the St. Lucia; Frederick Barlow, and James Robinson. The surveys are marked A, B, and C. I also annex the protests marked 1, 2. The vessel was condemned and sold: the account annexed shows the amount of sales.

Interrogatories proposed to the within named deponent, by Charles G. Loring, esquire, counsel for the Boston Insurance Company, and the New England Marine Insurance Company.

1st. Who composed your crew? Give the names of the officers and men, and the places where they reside.

2d. In what manner was said ship repaired and fitted at New York? Was she coppered? If yea, how far up were her keel and false keel coppered? If not, were they sheathed? and if so, with what material?

3d. Whether or not was her keel covered with leather?

4th. Is it usual to copper over leather, or did you ever know it done?

5th. What parts of this ship were coppered over leather?

6th. When a ship is coppered, is it usual to copper the keel and the false keel?

7th. Had you ever used your anchors before your arrival at Port au Praya? And whether or not had they been used in any former voyage?

8th. In what day did your vessel strike, as you have stated, off Port au Praya, and what is the entry of that day in the log-book?

9th. Was any entry made of the striking of the vessel in your log-book?

10th. Did you write home to inform your owners of this alleged accident?

11th. Did you ever make any protest on account of it?

12th. On what part of the stern or keel did the ship first strike?

13th. How large a place is Port au Praya; what the number of its inhabitants: and what facilities has it for repairing ships?

14th. What is the entry made in your log-book of the lost of your anchors? Please give a copy thereof.

15th. How large a place is St. Salvador's? how many inhabitants? is there any dock yard or arsen there? and whether or not is it a suitable place for repairing vessels? and when did you sail thence?

16th. Did you have any survey made of your vessel there, or any repairs put upon her?

17th. Where were you on the ninth of June, 1826, and what was the state of your vessel? Please turn to the entry of that day in the log-book, and give a copy of it.

18th. When did your vessel first begin to leak, and what entry thereof is made in the log-book?

19th. How much did she leak on the 5th September, 1829, and what entry is made thereof in the log-book? Give a copy thereof.

20th. When did you first perceive that the leather and sheathing were coming off, and what entry is made thereof on the 6th September, 1829?

21st. When did you first perceive that her copper was coming off? Turn to the log-book to entry of 7th October, 1829, and give a copy thereof.

22d. Did no sheathing or copper come off excepting at the place where the wales were cut in?

23d. What is the entry in the log-book under date November 3d, 1829?

24th. What are the entries 5th, 8th November, and December 13th?

25th. You have stated that at the island of Guam you procured boards to sheath the bends under the bows—what made such new sheathing necessary?

26th. What is the heading of the log-book, from the 13th September, 1829, to 11th October, 1829?

27th. What are the entries in the log-book 11th October, 1829, and 23d and 24th October, 1829?

28th. What was your longitude and latitude, 13th September?

29th. Caret=55 w., as I presume we were in about 30, Nov. the 18th.

30th. How long is the usual passage thence to Honorow?

31st. What caused your vesse! to leak?

32d. Did you inspect the vessel's bottom when she was hove down at Honorow, and did you superintend the proceedings, and accompany the surveyors while they were making their examinations; and were they faithful, and was every thing done that you thought proper?

33d. Did the surveyors state truly the condition of the ship, and was she as much damaged as they state in their reports?

34th. What was the nature of the damage mentioned in said surveys, as done to her keel, stem, and sternpost?

35th. The surveyors in their report, and you in the recital of your protest of their report, state that many parts of the plank of her bottom were destroyed. How were they destroyed?

36th. Did you take with you a specimen of the timber or plank, exhibting the manner in which it was worm-eaten? If yea, where is it now?

37th. Can a ship of her size be caulked or sheathed at Honoruru?

38. Did you keep a private journal, and if so where is it?

39. How many casks and barrels of oil would your vessel carry?

40. How many had you when you arrived at Honololu?

41. When you left the fishing grounds, whether or not were whales abun dant?

42. Who were the persons who coppered and repaired the vessel in New York before she sailed?

43. Have you the amount of the sales of the ship, &c., at Honcrue? If so, please annex it to your answer.

44. Have you the amount of sales in London, or do you know the net proceeds thereof, or nearly the amount thereof? If so, please state them. Who were the brokers who sold the same?

45. Will you annex that paper to your deposition?

46. How did you pay for the anchors in St. Salvador? and, if by bills of exchange, did you advise your owner thereof?

47. Is the log-book now present, and to which you refer, the same which was regularly kept on board the vessel during her voyage? And if so, by whom were the entries made?

48. Who has the care or custody of that log-book?

49. Will you leave it in the keeping of any person here to be referred to by the insurers, as the case may be?

50. Did you come on to Boston with Mr. Hazard? and if so, what was the object of your visit?

51. Did you give any deposition or affidavit on this subject, at his requcst? and if so, whom were present?

52. Whether or not were the insurers dissatisfied with it as being incomplete? and did they propose to Mr. Hazard to have your deposition taken in the presence of all parties, for their mutual benefit? and did he, or not, consent to that course?

Interrogatories proposed to said deponent by E. H. Derby, esquire, counsel for Samuel Hazard, esquire, and Jacob Barker, esquire, joint executors of the estate of Thomas Hazard, jr.

1st. When were you and Mr. Hazard notified to attend the taking of this deposition?

2. How many years have you been engaged in navigation?

3. Was the ship Dawn, when you sailed from New York, staunch, sound, well fitted, and completely prepared for the voyage on which she was bound?

4. Is Port au Praya an open roadstead? Please describe it.

5. Were there any reasons, additional to those expressed, why you did not heave the vessel down at St. Salvador?

6. How great would have been the expense of discharging and heaving your vessel down there?

7. Was there much exposure there to desertion at that time? Did you suffer much from that cause?

8. Was your wife with you on this voyage?

9. Did the seams in which there was no oakum, as stated in the extract from the log-book, admit water to the damage of the ship? If no, why?

10. Was there any period prior to September 13, 1829, when your vessel leaked much, except in violent gales? In what part did she leak previous to 13th September, 1829?

11. What course was you steering previous to the 13th September, 1829?

12. Were you thrown on your beam ends on the 13th September, 1829? Was she strained much?

13. What course was the ship heading from the 13th of September, to 12th October, 1829, and were you making the best of your way to the Sandwich islands?

14. Did the vessel leak after September 13, 1829, through the perforations of the worms, or the seams that had opened?

Further interrogatories proposed to said deponent by Charles G. Loring, counsel as aforesaid.

53. Did or did not the presidents of the Boston and New England Marine Insurance Companies say to Mr. Hazard last evening, that they would consent to taking this deposition at any time most convenient to him? And did he not refuse making any arrangement about it?

54. What are your means of knowing the expenses of heaving down a ship at St. Salvador? Have you ever had that job done there, or known of its being done there, and the expenses of it? State particularly on what basis you estimate the expenses.

55. Have you known of vessels going into those seas whaling, which were not coppered?

Answers of interrogatories proposed to said deponent by Charles G. Loring, esq., counsel for the Boston Insurance Company and the New England Marine Insurance Company.

1. Nathan Hildreth was first mate; James Reives was the second mate. Hildreth lives in Bridge Hampton, on Long Island. Reives lived in New York, when I shipped him: his father lives in Long Island: I don't know if he lives there. David Jacobs, an Indian from Long Island; John Dickinson, cooper, from New York; John Shelley, steward, from New York; Henry Mariner, sailor, from New York; Lyman B. Cook, carpenter, from New York; a man by the name of Blanchard, from New York—his christian name I don't know, but I believe it was William; George Quam, an Indian, from New York; Richard V. Skates, of New York. These were all with me when the ship was condemned.

2. When I joined the ship in New York, she had been hove out on one side, and coppered on that side; and while I was there she was hove out on the other side and coppered; she was then put in order for receiving her cargo. She was coppered up to what we generally call deep water ballast, or two streaks above light water mark. I don't know whether her keel and false keel were coppered. The ship was sheathed, and that is all I know about it. The ship was sheathed with pine.

3. Her keel was covered with leather; that I saw.

4. I don't know that it is usual. I have seen it done on this ship—never on any other.

5. I believe it all was coppered over leather; for the side I saw coppered was.

6. I don't know that it is usual or unusual.

7. Yes; I had used my anchors at New York, no where else: whether they had been used in a former voyage, I don't know; they were not new for this voyage.

8. It would be the ninth of February, sea-time, that we struck about ten. I don't recollect the day and hour, without referring to the log-book, which is as I have given it. The entry in the log-book on that day is as follows: "Saturday, 9th February, 1828. Light winds and thick, smoky weather; steering down the island of Jago; middle part calm; latter part steady winds; steering down the land; at ten, saw the town of Port au Praya; at noon, anchored in 6¼ fathom water." This is from the log-book; but I could state much more than this, and as well without the log-book as with it.

Ans. 9. It appears not.

10. I don't know whether I did or not; I'm not positive.

11. I believe the first protest mentioned it.

12. On her stern, on the lower part.

13. I don't know how large the place is, or how many inhabitants it contains: I only went in it up to the consuls. The harbor, I should think, would contain twenty vessels at anchor. There are no facilities for repairing vessels there.

14. The extracts are as follows: "Remarks on board, Sunday, 10th February. The wind blowing strong; a number of vessels in the harbor at anchor; middle part steady winds: latter part as the former; at 9 A. M. struck adrift: let go our starboard anchor, and brought her up; hove in the larboard chain, and found that the ring in the anchor had broken; got a launch and endeavored to get the anchor, but could not weigh it; carried out our stream anchor; employed trying to get our anchor." Another entry is thus: "Remarks on board, Tuesday, 12th. Strong wind, with some swell of the sea; at half past P. M. broke the flue of our starboard anchor, and dragged our stream anchor; we were dragging on to rocks, so we were obliged to cut and go to sea; middle part standing off and on; at 3 A. M. tacked in shore; at ten took our boat and launch, rowed into the harbor, and got our stream cable and anchor at noon; took it on board, tacking off and on the harbor."

15. It is a large sea port for South America: its exact size and the number of its inhabitants I can't state. There is no dock yard or arsenal there that I know of. I believe vessels may be repaired there, but the facilities and accommodations I don't know; I never saw them. I have said before, we sailed on the 9th of March.

16. No, Sir; no more than by my own men. I had no repairs put upon her there: before I sent my man down, I had thought of heaving the vessel down. When the man went down, and stated that all was fair except the piece of the false keel knocked off, I considered in my own mind that the vessel was in a proper state to perform the voyage.

(17. Where were you on the ninth of June, and what was the state of your vessel? Please turn to the entry of that day in the log-book, and give a copy of it.)

(This question was read, and the witness was preparing to answer it. Mr. Derby asked the witness if he had given his whole answer to the former question, when the witness made further statements; to the insertion of which Mr. Loring objected, as irrelevant and not legal evidence, and also to Mr. Derby's right thus to introduce it in this connexion.)

17. We were in the straits of Sunda: I remember that day telling the mate to lower the boats, and look around the ship. The day was calm. We found the oakum had got out, or never was put in, in some places that we could not determine. We found a place under one of the head knees, underneath the knee, where there was a little oakum, so that when the vessel pitched, the water run in; and we found some places under the stem, but the head knees we could not get at. The following is the extract called for from the log-book:

"Remarks on board, on Monday, 9th June. Light winds and calm; lowered our boats and took a row, and took a look about the outsides of the ship; found under her starboard counter three butts of the plank that had not been caulked; they were so open that we could easily run a pine stick ¾ of an inch thick through three of them, and a number of other places that were overlooked by the carpenters. We likewise found that the caulk-

er has omitted caulking about our head knees, which leaks bad in rough weather; and what they have attempted to caulk is bad enough. Middle and latter part light winds from N. E., and calm; saw a large number of fishing boats; at noon the island of C——— bore N. W. 18 miles distant."

18. I can't tell when she began to leak; she leaked all the voyage, but not badly; and without looking all over the log-book, I can't tell when the first entry was made there. When she sailed from New York, she leaked no more than the best of the ships; when it blew fresh there was a spell of the pumps. Here is an extract from the log-book: "Remarks on Monday, 17th August. Fresh winds and clear; the Offley in sight; middle and latter part steady winds, and fine, pleasant weather; saw the carcase of a whale; employed pushing oakum. We find our ship begins to leak. Lat. by obs. 29° 22" N."

19. The log-book says five hundred strokes an hour. I don't know whether it is correct or not; it states it to be in a gale. The entry is as follows: "Remarks on Saturday, 5th Sept.—Fresh gales, with a bad sea; took in all sail; middle part fresh gales; took in the waist boats; latter part a heavy gale; split the f. m. and mizen stay-sails; washed away the front of our try camboose. Our ship leaks at the rate of 500 strokes per hour. No obs."

20. The first time must have been probably about the sixth of September, on the starboard side, when we cut in our whales: in cutting we frequently miss the whale, and strike the side of the vessel. The entry in the log-book is as follows: "Remarks on Sunday, 6th September. Heavy gales and bad sea; at noon wore ship: boarded a sea, which stove in our bulwarks. Middle part a little moderate; set a close reef m. t. sail. Latter part a large swell; the wind moderate. Set double reeft topsails. Lat. by obs. 29° 34', north. Our ship continues to leak, and the leather and sheathing is getting off above the copper. Long. by lunar, 148° 22' east."

21. I don't know that this was the first; but somewhere about the seventh of October, just in the place where I saw the sheathing was started, I saw the copper was started; it was cut by the spade in cutting in the whales. The following is the copy from the log-book: "Remarks on Wednesday, the seventh Oct., pleasant. Cut in our whales, and commenced trying. Middle and latter parts pleasant, and a smooth sea; employed cutting the heads and clearing the decks. Lat. by obs. 34° 45' north, long. by lunar, 154° 25' east. Our ship increases leaking; the leather and sheathing is getting off the ship's bottom, and the copper is getting off fast."

22. Yes, there was more sheathing and copper lost on the starboard side, where we cut in the whales, than any where else. On the larboard side there was a little off under the bows, which we saw above water just before we got in; and when we hove her down, I found there was a few sheets off in different parts of the bottom, on the larboard side.

23. The log is as follows: "Remarks on board Nov. 3, 1829: moderate winds and cloudy from S. W. and S. S. W.; and steering east with a large swell of the sea from the N. W. At 8 P. M. took in m. t. g. sail, and double close reeft m. t. sail, t. sail, and f. t. m. st. sail. Latter part steady winds and cloudy, with rain. Set close reeft T. sails and M. sails. Lat. by obs. 33° 1' north. Long. by lunar 174° 50' east. Our ship continues leaking, and the leather, sheathing, and copper, continues getting off; took in the waist boat."

24. The extracts are as follows: 1st. "Remarks on Thursday, 5th November steady winds from N. N. W., stering E. by N. under single reeft t. sails,

m. sail, jib, and spanker. Middle part light, and from N. N. E. and calm; set all sail. Latter part light winds from W S. W. Lat. by obs. 32° 26′ north. Our ship continues leaking from 400 to 500 strokes per hour.

2d. "Remarks on Sunday, 8th November; steady winds from N. and N. N. W.; steering E. by N. Middle part light winds, with a large swell of the sea. At 2 A. M. light breezes from west. Latter part cloudy with rain. At 8, fresh winds from S. W.; took in m. t. g. sail, and close reeft the t. sails: the wind bearing to the westward. Our ship's leaking 4 or 500 strokes per hour. Lat. by obs. 32° 26′ N."

3d. "Pleasant; a part of the people on shore on liberty. Latter part calm. Our ship leaks two hundred strokes per hour. Had a survey on the ship."

25. When I went into Guam, there was a little piece of sheathing broke under the bows above water. I went down to examine it; and took a hatchet or bar with me. On pulling off the sheathing, I found it was worm-eaten. I took off a dozen feet till I came to the felt. The ship's bottom was sound: not a worm had touched it. I did not take off the felt; it was very thick; the worms had not touched it. Some of the sheathing taken off was worm-eaten, some were not I got a boat load of boards from the shore to replace the sheathing; but they did not suit, and I used my own boat-boards, about a dozen of them; or, I think, not so many.

26. Half the mates don't head a log-book, and my mates don't generally know where I'm going. The heading from 13th Sept., 1829, to 11th Oct., 1829, is, "Ship Dawn on the coast of Japan;" excepting the heading of 10 and 11th October, which is, "Ship Dawn, cruising on the coast of Japan." The mate was keeper of the log-book. I never knew his headings, nor ordered any of them.

27. The extracts are as follow: "Remarks on Sunday, 11th Oct.: Light winds, and fine pleasant weather. Steering to the eastward, bound to Wahoo for hoops and salt provisions. Middle part fine pleasant weather. Lat. by obs. 31° 36′ north: 9 bundles of hoops is all we have on board."

2. Remarks on Friday, 23d Oct.: Light airs and calm; employed stowing oil and breaking out between decks. Middle and latter part fine pleasant weather. Employed and stowing oil below. Chocked off the main hole. Our 3 last whales made 102 bbls. Long. by lunar 166° 13′. Lat. by obs. 31° 48′ north. We cannot muster casks enough for more than 50 bbls., on account of hoops to set up shooks. John Dickson cut his hand with *adds.*"

3. "Remarks on Saturday, 24th Oct.: Moderate winds, and fine pleasant weather: employed overhauling our water; find that we have only 9 casks of 145 gallons each. Middle and latter part light airs and pleasant. Saw fin-back whales. Three men off duty. Lat. by obs. 32° 07′ north.

28. The log-book says there was no observation on the thirteenth of September. On the 12th, the log-book gives latitude 30° 08′ north. On the 14th lat. 29° 55′ N. So I presume we were in about 30° N. on the thirteenth.

30. I cannot determine my longitude exactly; but I should think six weeks was a fair passage: it may be done in four; but it is good run in six weeks.

31. I don't know what caused the vessel to leak; whether it was the worms getting through to the bottom or not, I can't tell: she was badly strained in the gale of wind all over. We started no butts; and I expect her being strained was the cause of adding to her leakage: above water,

when I took off her knee, was a bad place, but that I stopped. When she was light, she didn't leak so much.

32. I did certainly inspect the vessel's bottom when she was hove down at Honolulu. I did not superintend the surveys. The consul called the survey at my request: I attended the surveyors while they were making their examinations. I presume the surveyors were faithful: I was satisfied with their judgment: I don't recollect any thing that ought to have been done which was not done.

33. I think they stated truly, and that the ship was as much damaged as is stated in their reports.

34. They were perforated by worms, which I believe got at her by her false keel being knocked off: had that remained on, I believe she would have been a good ship to this time.

35. The principal cause of all was worms: they had got into the keel and garbed streak: I took up a piece close by the stern which the worms had got in; it was replaced by my carpenter: it was about a foot and a half long.

36. I took a piece of the keel, and bro't it home: I left it in New York, and where it is now I don't know: I left it among my baggage, and it is there in New York, or at Long Island, at my house.

37. Yes, sometimes; not at all times: it is done there with difficulty by heaving them out along side a hulk.

38. Yes: it is at home, or in New York, I don't know which.

39. I should calculate, besides her stores and provisions, about twenty-four hundred barrels.

40. My mate gauged it seventeen hundred: I don't think there was so much.

41. There was a plenty of whales.

42. I don't know their names; but Ring was one, a ship carpenter, and some long name I don't recollect, such as McUmar, employed by Mr. Hazard.

43. I have one which I cannot leave, and Mr. Hazard has just stated that he would send one to the President of the Insurance Offices, from New York, as also an account of the disbursements at Honolulu.

44. I have not the account of sales in London: I do not know the net proceeds thereof, or nearly their amount: I can't tell any thing about it: the brokers I don't know: the merchants were George Wilds & Co. A paper was sent to me by George Wilds & Co., purporting to contain the prices of the oil, and representing William and George Beal as the brokers: I don't know them, and never employed them.

45. Yes, I do, and it is marked Z.

46. I drew a bill on Mr. Hazard, and sent him a letter advising him of it.

47. The log-book referred to was the regular log-book of the Dawn: my mate kept it.

48. I now have it.

49. Not at present.

50. I came to Boston with Mr. Hazard; my reason was the request of the Insurance Offices, contained in a letter to Mr. Hazard from them.

51. I gave a deposition yesterday at Mr. Hazard's request; it was given at Mr. Hayward's office; there were persons in the office I did not know: Mr. Hazard was present. It is annexed, marked X.

52. I was present when Mr. Hazard handed my affidavit above to Mr. Loring, or some of the parties; it was objected that it was not enough, or was not in the proper form, or was wanted in another form. What was said I don't know: it was proposed to have my deposition taken again: this was proposed by the presidents of the offices: Mr. Hazard said he did not wish to have any thing to do with it at present; he wished to go off to New York to get advice.

Answers to interrogatories proposed to said deponent by Hasket E. Derby, esq., counsel for Samuel Hazard, esq., and Jacob Barker, joint executors of the estate of Thomas Hazard, jr.

1st. We were notified last evening. The deposition commenced rather after nine this morning.

2d. Since 1804—twenty-six years.

3. Yes, I think she was.

4. Yes. It is a harbor on the side at the southeast point of the island: it is entirely an open roadstead: there is no shelter except a little nook that makes in.

5. I thought of heaving her down, and I mentioned ashore the damage I received by striking on the rock at St. Jago: then while ashore I asked the consul and Mr. Gilman if the vessel could be hove down there; they observed that I could heave the ship down, but it would be done with difficulty. I told them what I had thought, and what had happened to the vessel, and that I thought her safe to perform the voyage. I had thought of heaving the vessel down before I sent my diver down. I consulted with the consul and Mr. Gilman: their opinion corroborated mine—that I should proceed on: but it made no difference; I should have done as I did if they had not concurred. My reason was that I thought I could go on with safety: besides, it would have been attended with difficulty. I must heave the vessel down by the side of a hulk; it would be very expensive. I should run the risk of losing all my crew, and what cargo I might put ashore; for the country was in a riotous state, and the negroes about rising.

(Mr. Loring objects to all conversations with the consul and Mr. Gilman, and to their opinions, being admitted.)

6. I don't know exactly: if I had hove her out, and discharged my cargo, it would have cost two or three thousand dollars to put on that piece: had I done more, it would have cost more: how much I can't tell.

7. The exposure was great. I lost three men there; and recovered two finally; but waited two days for them.

8. Yes, sir.

9. No, sir; because they were above water: in rough weather, when the ship dipped, the water came in, in smooth weather it did not.

10. Not materially; in bad weather she leaked as before stated from the log: in good weather she did not leak materially before the gale on September 13th: prior to then, she leaked under the counter, and at the knee in the stern above high water mark.

11. I was cruising on Japan, everywhere, for whales, wherever they were to be found.

12. What we call so, nearly, not exactly: she was strained very much.

13. After that gale the whole direction of my course was to get to the islands, and I headed that way all I could. In good weather, when I could, I caught whales: I caught many, and saw many.

14. I concluded the principal leak was through the seams in all parts; mostly in her upper works, where she was most strained, and the oakum was out: she was well racked in the gale: the worms had not got in far enough to make her leak much.

(Mr. Derby, counsel as aforesaid, objected to all extracts made from the log book previous to their insertion.)

Answers to additional interrogatories proposed to said defendant by C. G. Loring, esq.

53. I think the presidents of the Insurance Offices did say to Mr. Hazard that they would consent to the taking of this deposition at any time convenient to him; and I think Mr. Hazard refused making any arrangement about it: he said he wished to return to New York to get advice.

54. I know only from the situation of the place, and the state of it, and what means I should have had to use; I never had that job done there: I can't say as to any basis of calculations except as above; it might not have cost one thousand, but I should have considered myself getting off well for two thousand dollars: the damage would have been more than three; pretty nearly a sacrifice of the voyage, for I should have lost all my crew.

55. Formerly when I was on the banks, it was common for ships to go without copper.

(Signed) HENRY GARDINER.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss.*

This twenty-third day of November, in the year of our Lord eighteen hundred and thirty, personally appeared before us, the subscribers, two justices of the peace, quorum unis, the aforesaid deponent, Henry Gardiner, and, after being carefully examined, and duly cautioned to testify the whole truth, and nothing but the truth, made oath that the foregoing deposition by him subscribed is true: taken at the request of the President, Directors, and Company of the Boston Insurance Company, and the President, Directors, and Company of the New England Marine Insurance Company, to be preserved in perpetual remembrance of the thing. And we duly notified the said deponent, by the summons annexed, and to him addressed, and the within named Barker and Hazard, executors as within mentioned, by the summons annexed to them addressed, to which summonses, and to the returns of the officers thereon written, reference is to be had as to parts of this caption; and Samuel Hazard, esquire, was personally present, and he and the said Jacob Barker, attended by Elias Hasket Derby, esquire, their counsel, the said Barker and Hazard being the only persons we knew to be interested in the property to which said deposition relates.

(Signed) W. MINOT,
EDWARD G. LORING,
Justices of the peace, quorum unis.

Suffolk county—Boston, December 11, 1830. Received and entered the aforegoing deposition, and interrogatories, and answers, and also the subpœnas, and seven papers hereunto annexed: Suffolk depositions, lib. 342, fols. 71 to 86, inclusive.

(Signed) Per HENRY ALLINE, *Reg.*

I.

Protest at St. Salvador.

Consulate of the United States of America, port of St. Salvador, Brazil. I, the undersigned, consul of the United States of America for the port of St. Salvador and its dependencies, do hereby certify that Henry Gardiner, master of the ship Dawn of New York, now in this port, personally appeared at my office on the tenth day of March, 1828, and noted a protest on account of said ship and cargo, reserving the privilege of extending the protest at a time and place most convenient. The said master stated at the same time, that, on the sixteenth day of July last past, while on his passage from the United States, bound to the Pacific Ocean, that, in bad weather and great sea, one of the said vessel's boats was staved all to pieces, and on the 10th day of February following, being then in the harbor of Port au Praya, he lost one of the ship's anchors, and on the eleventh day of said February, the best bower anchor being broke, on which account the cable was cut and and sail made to clear the rock, the vessel having struck, but went off, and arrived at this port on the 9th day of March, 1828.

[SEAL. Given under my hand and seal, this fourteenth day of March, 1828.

(Signed) WOODBRIDGE OLDIN, *Consul.*

2.

Protest at Oahee.

Consulate of the United States, Sandwich Islands. By this public declaration and protest, be it known that, on the twenty-fifth day of February, in the year eighteen hundred and thirty, personally came and appeared before me, Henry Gardiner, commander of the ship or vessel called the Dawn, of the burden of three hundred and twenty-six tons, or thereabouts, belonging to the port of New York, who did declare that he sailed in said ship from the port of New York, on the thirtieth day of December, in the year eighteen hundred and twenty-seven, bound on a whaling voyage to the Pacific ocean; that, in the month of February, in the year eighteen hundred and twenty-eight, he put into Port Praya, where he broke one anchor, and lost another, which he was unable to recover, though every exertion was used; that, at said Port Praya, the aforesaid ship struck on a rock, but went off, and having cut the cable, sail was then made on the ship; that, on the ninth day of March, same year, he put into the port of San Salvador, coast of Brazil, where he noted a protest before the American consul at that place, and purchased anchors for the ship; and said Gardiner did further declare that he *said* from San Salvador on the nineteenth day of March, year aforesaid; and on the fourteenth and fifteenth days of May following, in the latitude of forty-one degrees and five minutes south, and longitude from eighty to eighty-three degrees east, he experienced heavy gales, with large and irregular sea, which caused the ship to labor much; that he passed round the Cape of Good Hope, through the China sea, to the coast of Japan; that, after the season for whaling had passed, he proceeded without delay to the Sandwich Islands, where he anchored at Hedoos bay, in the island of Owhyhee, on the twenty-fifth day of November, same year; that from the Sandwich Islands he proceeded to cruise about the equator till the fourth day of April, eighteen hundred and twenty-nine, when he proceeded to the island of Guam, where he anchored

on the nineteenth day of the same month; that, from the island of Guam, he proceeded to cruise for whales on the coast of Japan.

And said Gardiner did further declare, that, whilst cruising on the coast of Japan, he experienced severe weather and high seas, but more particularly so on the thirteenth day of September, eighteen hundred and twenty-nine; when in the latitude of thirty degrees north, and longitude one hundred and forty-nine degrees east, having a large quantity of oil on deck, and blubber in the room, a heavy gale commenced which lasted for two days; that, during the gale, the sea was unusually high and irregular, which caused the ship to labor and strain much; that the wind blew with such violence that many of the sails were split, and the ship obliged to be hove to under bare poles; and said Gardiner did further declare, that, during said gale, the ship commenced leaking, and increased to nine hundred strokes per hour; that, after the gale had abated, he made sail, and proceeded with all despatch for the Sandwich Islands, where he arrived at the island of Oahee, in the port of Honololu, on the eleventh day of December, year aforesaid, the leak continuing during the passage from four hundred to five hundred strokes per hour; and said Gardiner did further declare, that, on the fourteenth day of December, year aforesaid, at the port of Honololu, island of Oahee, he caused a survey to be held on said ship, consisting of three masters of ships and three shipwrights, who gave it as their opinion that the ship Dawn ought to be discharged, and then hove down, and her bottom thoroughly examined, before she could be considered worthy to proceed to sea; that he, the said Gardner, in conformity with the report of said survey, had the said ship discharged and hove down; that he then caused a survey to be held on the bottom of said ship, consisting of three shipmasters and two shipwrights, who gave it as their united opinion, after having thoroughly examined the bottom of said ship on the larboard side, (the stem, keel, and stern post exposed to view;) that the ship Dawn, in the condition in which she then appeared, was entirely unseaworthy, and that, in order to make her seaworthy, it would be necessary that she be caulked and horsed in all her seams; that she have a new stern, a new main keel, and a new false keel; that all the plank that might be found destroyed be replaced, and the ship sheathed and coppered.

And said Gardner did further declare, that, having righted said ship, and made a few repairs which were necessary, that, on the twenty-seventh day of January, in the year eighteen hundred and thirty, he again hove down said ship, with her starboard side out, when he caused a third survey to be held, consisting of four ship-masters and three shipwrights, who reported (after having examined the bottom of said ship on her starboard side,) that, to make her seaworthy, she must have a new stern, a new keel, and part of a new stern post, and many new pieces or whole plank put into her bottom; that the only kind of wood which could be procured at this place would be of a nature which would render necessary its being taken out on her arrival in the United States; and that, every circumstance considered, with the difficulty if not impossibility of procuring funds and materials, it was ther decided opinion that the said ship Dawn should be condemned, and her hull, and apparel, and furniture, sold in lots for the benefit of whom it may concern. And said Gardner did further declare, that he then caused said ship, with her appurtenances, stores, &c., to be sold at public auction for the benefit of whom it might concern. And said Gardner did further declare that said ship, at the time of her departure from New York, was tight, staunch, and strong, sufficiently manned, vitualled, and found in all things necessary and

needful for such a voyage; and that he, with all the rest of the crew, used their utmost endeavors to preserve the said vessel from damage; and, therefore, the said Henry Gardner did declare and protest, as he doth by these presents most solemnly protest, against all and every person or persons concerned, that all losses, detriments, and damages that have happened to said ship and cargo ought to be borne by the merchants, underwriters, or others interested, or whomsoever it shall or may concern.

HENRY GARDNER.

Sworn to before me, this twenty-fifth day of February, in the year eighteen hundred and thirty, at Honolulu, island of Oahee.

[SEAL.] In witness whereof, I have hereunto set my hand, and affixed the seal of the consulate.

(Signed) JOHN COFFIN JONES, JR., *U. S. C.*

We, Nathan Hildreth, chief mate, and James Reeves, second mate, of the ship or vessel called the Dawn, of New York, whereof Henry Gardner is master, being severally sworn, do severally make oath and say that the instrument of protest hereunto annexed hath been clearly and distinctly read over to them, the deponents; and that the several matters and things therein contained are right and true in all respects, as the same are therein particularly alleged, declared, and set forth.

(Signed) NATHAN HILDRETH.
JAMES REEVES.

Sworn to before me, this twenty-fifth day of February, in the year eighteen hundred and thirty, at Honolulu, island of Oahee.

In witness whereof, I have hereunto set my hand, and affixed the seal of this consulate.

(Signed) JOHN COFFIN JONES, JR., *U. S. C.*

C.

Survey. Also, the following surveys of said ship, made at Honolulu, in the words following: The undersigned do testify that, by the request of Henry Gardner, commander of the ship Dawn of New York, of the burden of three hundred and twenty-six tons, or thereabouts, they have thoroughly examined the bottom of said ship both on the starboard and larboard sides, the said ship being hove out so as to expose to their view every part of the keel, stem, stern post, &c.; and they do give it as their decided opinion, that, in order to make said ship sea-worthy, she will require a new stem, a new keel, and part of a new stern post; that she must be thoroughly caulked, sheathed, and coppered, and have a large number of pieces, if not whole plank, put into different parts of her bottom; that, after said ship should be repaired at this port, (should it be practicable) the wood which will necessarily have to be put into her (the only kind which can be procured at this island) will be of such a nature, that it will necessarily have to be taken out on the return of the ship to the United States.

Therefore, the undersigned, after taking every thing into consideration; the long time that will be employed in making said ship sea-worthy; the large sum that it will cost; the difficulty, if not impossibility, of procuring funds and materials; the loss by leakage, which the cargo of such ship must necessarily sustain whilst the vessel is under repair; and all and every circumstance considered, do give it as their decided opinion, that, for the inte-

rest of all and every one concerned, the said ship Dawn ought to be condemned at this port, and her hull, apparel, furniture, and all things belonging to her, sold in lots, for the benefit of whom it may concern.

Given under our hands at the port of Honolulu, Oahee, this twenty-seventh day of January, in the year eighteen hundred and thirty.

(Signed) W. BLANCHARD.
WILLIAM C. LITTLE.
JOSEPH I. WHITTEMORE.
JOHN MEEK.
FREDERICK BARLOW.
JAMES ROBINSON.
MANUEL A. SOMES.

Amount awarded for survey, at five dollars each, is thirty-five dollars.

United States' Consulate, Sandwich Islands. Personally appeared before me, at the office of this consulate, William Blanchard, master of the ship Honqua, of Boston, William C. Little, master of the brig Diana, of Boston, John Meek, master of the brig Waverly, of Boston, Manuel A. Somes, master of the brig Santa Lucia, of Manilla, and Joseph I. Whittemore, Frederick Barlow, and James Robinson, shipwrights, and made oath to the above certificate of survey, to which they had severally subscribed their names.

In witness whereof, I have hereunto set my hand, and affixed the [SEAL.] seal of this consulate, at Oahee, this first day of February, in the year eighteen hundred and thirty.

(Signed) JOHN COFFIN JONES, JR.

A.

[Survey. We, the undersigned shipmasters and shipwrights, now at Oahee, Sandwich Islands, do jointly and severally declare unto all whom it shall or may concern, that, on the fourteenth day of December, in the year eighteen hundred and twenty-nine, we went alongside and on board of the ship Dawn of New York, (of the burden of three hundred and twenty-six tons, or thereabouts) by the request of Henry Gardiner, commander of said ship; that we jointly and severally examined, to our satisfaction, said ship, her hull, masts, spars, &c. &c., and do hereby certify and declare, that we found said ship to be in a very bad and dangerous state—leaking, from some cause, at the rate of three hundred and fifty strokes per hour; and we do therefore give it as our decided and united opinion, that it is indispensably necessary and proper that the said ship ought to be discharged at this port, and then hove down, and her bottom thoroughly examined, before she can be considered worthy to proceed to sea.

(Signed) LLOYD POWERS.
WM. BLANCHARD.
J. W. CHEEVER.
FREDERICK BARLOW.
JAMES ROBINSON.
ZACCHEUS ROGERS.

Amount awarded for survey, at five dollars each, is thirty dollars.

B

[Survey. We, the undersigned shipmasters and shipwrights, do testify and declare that we were this day requested by Henry Gardiner, commander of the ship Dawn of New York, of the burden of three hundred and twenty-six tons, or thereabouts, now at anchor in this port of

Honolulu, to constitute a survey for the purpose of examining the bottom, &c. of said ship, and to report the condition we should discover her to be in; that we accordingly went alongside, and thoroughly examined the bottom of said ship, which we found hove down, her keel, stem, and stern post entirely exposed to our view on the larboard side; and we further testify that we found the keel of said ship almost entirely perforated and destroyed, her fore foot and the greater part of her false keel gone, her stern post somewhat injured, and her stem completely ruined; that we found, also, most part of the sheathing, copper, &c. entirely gone, and what was left could be of service but a short time longer; many parts of the plank of the bottom were destroyed, and the main keel we found had never been coppered.

We therefore give it as our opinion that said ship, in her present condition, is entirely unseaworthy; that, in order to make her so, it will be necessary that she be entirely stripped; that every seam in her bottom be thoroughly caulked and horsed; that she have a new stem, and a new main keel, (within one inch of the garboard streak,) and a new false keel; that all the plank that are destroyed be replaced, and the ship sheathed and coppered. We give it as our opinion that said ship can be repaired at this port, if materials can be procured and funds provided, but we conceive that the time that will be employed to make said ship sea worthy will not be less than five months, and the expenses not less than twelve thousand dollars.

Given under our hands at Honolulu, Oahee, this nineteenth day of January, eighteen hundred and thirty.

(Signed) WM. BLANCHARD.
JOHN MEEK.
MANUEL ANTO. SOMES.
FREDERIC BARLOW.
JAMES ROBINSON.

Amount awarded for survey, at five dollars each, is twenty-five dollars.

And the defendants, further to maintain said issue, produced and read the deposition of Frederick Barlow, in the words following:

Deposition of Frederick Barlow for defendants.

I, Frederick Barlow, of Newport, in the State of Rhode Island, boat-builder, of lawful age, to testify on oath, depose and say: I resided in the Sandwich Islands about three years the last time I was there; in all I have resided in those islands about fourteen years. In the summer of eighteen hundred and twenty nine, I was in the port of Ononuru, when the ship Dawn, Capt. Gardiner, came in there. In December of said year, the Dawn came again into Ononuru. Mr. Jones, the American consul, then requested me to go on board the Dawn as surveyor, and I did. The vessel was loaded deep in the water then, as all whale ships are; we could see nothing of the bottom then; we surveyed the spars, and found the bowsprit sprung; and that was about all we could see. We, that is, the surveyors, got into the boat, and went round the ship: we found her very badly worm-eaten above water as it then was, where the copper was off; we found the cut-water for about from six to nine inches into the solid part of the stem eaten in a gap, worse than any thing I ever saw: it was completely honeycombed. That finished the survey at that time. It was the opinion of the surveyors that she should be hauled in and hove down, and discharged; and then this was done while they were discharging the cargo. The upper works were caulked to

keep her from sinking when hove down: vessels are always caulked in this way, or tried to see if they want it, before heaving them down. Then we hove the ship down, and surveyed her bottom: the lower streak of copper was so placed that it would have required another streak of copper to cover the garbed streak, and come about an inch on to the keel; that is, there was no copper on the keel or garbed streak, and had not been on that vovage. The keel looked like a honeycomb, only the worm holes were larger, say an inch and an eighth in diameter for the largest; they were measured by Mr. Steven Reynolds at the time of the survey. We took an axe, and cut as far into the keel as we thought we ought to, and we could not find an end to the worms. We were satisfied it was not seaworthy; we would have put a new one in if they would have paid us for it, but I believe they could not raise the funds. The last, that is the lowest, streak of copper on the Dawn had its lower edge nailed with the nails four inches apart, and this showed that there had been no copper nailed on to the lower edge of that. An inch and a quarter is the proper distance for nails. I have myself, in coppering a ship, always began with the keel, and coppered up; here I don't know where they had begun, but they had not put any copper on the garbed streak or keel. If we had repaired the ship out there, the stern post must have been new scarfed for three or four feet; she would have required a new keel, and her fore foot was badly eaten, and must have been renewed. Then we righted the ship, and hove her down on the other side: we found this side as bad as, if not worse than the former side, being eaten by the worms, and having the copper off in the same way. Captain Gardner asked us if she could not be repaired? myself and Mr. Robinson told him that we would take out the keel, put in another, and repair her so that she could go home, for five thousand dollars, but that the keel we should put in would have to come out again on account of the badness of the wood. Captain Gardner consulted with Mr. Reynolds, and, on trying Mr Jones and Mr. William French, they found they could not raise the funds, and they then resolved to sell her for the benefit of whom it might concern. The vessel was sold at public auction, and without sails, masts, or rigging, that is, only the hull; brought nine hundred and sixty dollars, as I think, and was bought by Amos Knight, of Manchester, and afterwards sold by Mr. Knight for nineteen hundred and twenty dollars for a sheer hulk.

Frederic Barlow.

Interrogatories proposed to said deponent by Charles G. Loring, esquire, counsel for the President, Directors, and Company of the Boston Insurance Company, and the President, Directors, and Company of the New-England Marine Insurance Company.

1. What was the condition of the bowsprit, and what was the cause of its being sprung?

Answer. The bowsprit out towards the bees was rotten, and this I think was the cause of its being sprung.

2. If a vessel's bottom had been coppered, and the copper had been worn off by the usual wear and tear, or partly rubbed off, whether or not would there be any thing remaining to show that she had been coppered? If yea, what?

Ans. Yes, sir, there would have been a row of nails there if nothing else.

3. Were there any such signs on the keel of lower part of the garboard streak of the Dawn?

Ans. No, sir.

4. What was the state of the copper generally on the bottom of said ves-

sel? How much was there remaining, and in what places, if any? Was the bottom entirely bare?

Ans The copper generally would have answered to have brought her home with a very little patching. It was pretty much all on. There were some places where it was rubbed, and some where it was much worn; except in these places, it was pretty good for a vessel which had been at sea as long as she had. There was no part of the bottom which the copper had been on worn entirely bare: the worms had eaten in a little above the garbed streak, and worked up under the copper for about a foot: it could be taken out in handfuls.

5. Had said vessel been sheathed under her copper? If yea, with what materials? And if with different materials, state what they were, and to what parts they had been respectively applied.

Ans. The Dawn had been sheathed under her copper, I should think, with pine boards, or spruce, all over: she had had some leather on her, but I dont know where; there was very little of it remaining down towards the keel, I believe: I don't recollect exactly where it was.

6. What was the state of the copper just below the wales, where whales are usually cut in?

Ans. About there I think there was considerable off, but I don't recollect very exactly about it, I think the Dawn was not coppered to the bends, not within two feet of the bends midships; and she was badly eaten above the copper in different parts, particularly at the bows. If she had been repaired, there would have been a number of pieces, if not whole plank, to be taken out.

7. Have you seen the surveyor's reports annexed to Captain Gardner's deposition now produced, and which is recorded in registry of deeds, lib. 372, for. 71; and are they the true original report of the surveyors, and are the signatures thereto genuine?

Ans. The reports alluded to are before me: they are the true original reports of the surveyors, and the signatures thereto are genuine.

8. Those reports speak of the keel, sternpost, stern and planks, as having been "injured," and "destroyed," and "perforated," and "ruined:" please state in what manner, and by what causes these injuries, destruction, perforation, and ruin, were effected.

Ans. For the want of copper, the destruction was by the worms.

9. What was the condition of the planks and timbers? Whether or not were any of them rotten or decayed, otherwise than in consequence of being worm eaten?

Ans. The planks and timbers were perfectly sound. I saw no rotten wood aboard of her, except the bowsprit: the planks and timbers were no otherwise decayed than by the worms.

10. Which, and how much, of the planks were worm-eaten?

Ans. Above the copper, and below the copper towards the garbed streak, and in its lower edge, and the keel, the planks were worm eaten: the forehold of the garbed streak was badly eaten.

11. Whether or not did said vessel appear to have been strained, or othwise injured by violence of winds or waves?

Ans. No, sir, I did not think she did.

12. What was the condition of the leather sheathing which you saw—was it sound, or rotten, or tight, or loose, or weak?

Ans. The leather was loose, and I should say it had been on a little too long; that age had made it bad. I don't recollect particularly about the leather, but I recollect some being there.

15. Whether or not could the Dawn have been caulked, sheathed, and coppered at Honolulu, if her bottom had been in a suitable condition? State what facilities there were for these repairs, if they could have been made.

Ans. Yes, sir, the caulking, sheathing, and coppering, could have been done, providing there was nothing else wanted: there were a plenty of boards, nails, copper, and oakum.

14. If a vessel wanted a new false keel, whether or not could one at any time be put on at the Sandwich Islands? And, if yea, of what material? And could it or not be so secured as to be impervious to worms?

Ans. I should say a false keel could be put on there at almost any time: it would be of spruce—oak is out of the question. By coppering it, and in no other way, it could be made impervious to worms.

15. Whether or not are the boards of the bread fruit tree accessible to worms?

Ans. No, sir; I should not say it was: that is the only wood the worms wont penetrate.

16. If the vessel had lost the copper for her keel, or false keel, whether or not could they, at any time, be sheathed with that wood at the Sandwich Islands?

Ans. No, sir; not at any time, because it is not always to be had there; but little grows there: the most of it is brought from Otaheite, and that is fifbeen days' sail, about, from the Sandwich Islands.

17. After the sale of said vessel, was any sheathing put on her keel or bottom to fit her for use as a hulk? If yea, what?

Ans. Yes, sir; her keel and garbed streak was sheathed with bread fruit wood: I helped to put some of it on myself.

18. Whether or not were any other parts of her bottom bare, or so exposed as to require such sheathing to prevent the worms from getting into the planks?

Ans. No, sir; I dont think the sheathing was put on any where else than above mentioned. There was a general turn out, and we all went to help the man repair his vessel.

19. Whether or not are there worms in the harbor of Honolulu which destroy ships' bottoms? If yea, state what you know about the danger to be apprehended from them.

Ans. I should say that, in course of a week, they would eat through an inch board, if it was not painted, or covered in some way to prevent their entrance.

20. Whether or not is copper usually to be had at the Sandwich Islands?

Ans. Yes, sir; In general, though there are times when it can't be had; but generally there is copper there: almost every merchant vessel who goes there carries some.

21. Whether or not was there any there when the Dawn went in there the first time?

Ans. I dont recollect whether there was any there or not: when the Dawn first came in, there was no call for it; but I suppose there was as much there then as afterwards; for there had not been any scarcity of copper there for two years.

22. What was the cause of the ship's leaking and unseaworthiness, and

of her being condemned and sold? Whether was it her being worm eaten, as you have stated, or any injury she had sustained by the perils of the seas?

Ans. I should say it was on account of the worms. I should not say she had sustained any damage by the perils of the sea.

23. Did you examine the keel and garboard streak on both sides? And whether or not did either of them appear to have been coppered on either side further than you have stated?

Ans. We examined on both sides: neither side had been coppered further than I have stated.

24. Had you any conversation with Captain Gardiner about the keel of the ship, and its having been coppered? If yea, state what he said about it.

Ans. At the time of the survey, and previously, also, Captain Gardiner told me that, in New York, the vessel had been hove down, and all coppered, except the garboard streak and keel, *in his presence;* that he went to dinner, leaving the carpenters at work on his ship: he was gone a short time only, and, at his return, the ship was righted; that he asked the workmen or boss carpenter if he had coppered the keel, and he told him she was all done complete: that he, Captain Gardiner, remarked he had been gone so short time, that he should not have thought it could have been done. Before the ship was hove down in Onoruru, Captain Gardiner remarked, several times, that he feared the keel was not coppered.

25. Have you had experience in coppering vessels? If yea, how much?

Ans. I have had experience twenty years in coppering and shipcarpentering.

26. Have you ever seen vessels' bottoms from which the copper had been rubbed or worn off? If yea, how many, and what was the appearance of them, and what marks, if any, remained to show that they had been coppered?

Ans. I have seen, within twelve days, at New Bedford, whaling vessels returned from their voyages, from whom the copper had been completely cleaned off: their bottoms were as bare as a table, excepting the rows of nails in the edges and butts of the copper, which had fastened it on. I have seen two or three hundred vessels from whose bottoms the copper had been worn: on all there, the rows of nails remained to show the places of the copper.

27. Had you any conversations with the mate of the Dawn upon her condition, and the proceedings respecting her at Honolulu? If yea, state all that passed between you and him, or between him and others, in your presence, upon these subjects.

Ans. The mate of the Dawn brought a paper to me to sign, which I recollect I did not, and could not with propriety: the contents of the paper I do not recollect. I do not recollect any particular conversations with the mate.

28. What vessels were at the Sandwich Islands when the Dawn arrived there in December, 1829? Where did they belong, and where were they bound? And whether or not could any one have been obtained to bring home her cargo to the United States? State all you know upon this subject.

Ans. The Honqua, the Panther, Captain Bowers, of Providence: the Hougua was of Boston; they were both lying at Ononuru. The Honqua sailed in November, 1830, for Canton: the Panther sailed for Canton some time, say fifteen days, after the survey, of the other matters inquired of: I know nothing except, from hearsay.

28. How did you learn that Captain Gardiner could not procure funds? Who told you so?

Ans. Mr. Jones, Am. Consul.

Cross interrogatories proposed to said deponent by E. Hasket Derby, esq., counsel for Samuel Hazard, administrator of the estate and effects of Thomas Hazard, late of the State, county and city of New York, merchant.

Frederick Barlow.

1. Whether or not was there any false keel upon the Dawn when you examined her? If so, what was its appearance and condition?

Ans. There was no false keel, but there was a shoe, or piece of a shoe, about twelve feet long—it might have been longer. This piece was considerably worm eaten, but not so badly as the main keel: the reason why, I can't tell.

2. Was there any leather upon the keel or false keel?

Ans. There was some leather about the garbed streak and the keel; about what parts of them I don't recollect.

3. What was the condition of the forefoot of the Dawn and its vicinity? Were there any appearances of damage on that part of the ship apparently caused by stranding?

Ans. It was badly eaten to a honeycomb. I hewed that out myself. There was no appearance of damage there apparently caused by stranding.

4. What was the width of the portion of the garboard streak uncovered by copper?

Ans. I should say from seven to nine inches.

5. Did you carefully examine the edges of the lower range of copper? Was the whole range perfect?

Ans. The edge of the lower range of copper was more carefully examined than any other part, to ascertain if she ever had any copper attached to that lower edge. The whole of the lower range was perfect, except that some of the corners of the sheets were turned up like dog's ears, as they naturally would be, for want of being nailed.

6. What conversation have you had with the President of the Boston and New England Marine Insurance Companies, and their agents, on this subject?

Ans. Not a word, except that, as I was not summoned, and Mr. Loring and Mr. Pope, asked me to come up here and testify—nothing more.

7. Have you any interest in the result of the suits commenced by Samuel Hazard against said companies, or have they offered you any inducements, of any kind or nature, to testify?

Ans. No, sir.

8. Was not the person who gave nineteen hundred and twenty dollars for the hull of the Dawn, after the sale, at auction, present at the auction?

Ans. Yes, sir.

Additional interrogatories proposed to said deponent by said Charles G. Loring, esquire, counsel as aforesaid.

When you stated in answer to the interrogatory, that you could remove it by handfuls, what do you mean? Which could be removed?

Ans. The sheathing under the copper; the copper was ripped up to see how far the worms had gone for one or two sheets in different parts of the ship. We did not get to the end of the worms, but we got far enough to find the sheathing was a honeycomb.

How frequent are the communications between Otaheite and the Sandwich islands?

Ans. The whalemen outward and homeward bound touch there occasionally, say ten a year, perhaps more, perhaps thirty. The nation vessels, I have, in residing there three years, known to come to the Sandwich islands three times—one vessel twice, another once.

FREDERICK BARLOW.

Boston, November 10th, 1831.

Taken and reduced to writing, by
JAMES C. MERRILL, and
EDWARD G. LORING, } *Justices of the Peace.*

Evidence of William Blanchard for def'dts.

The defendants, further to sustain the issue on the part of the defendants, called William Blanchard, as a witness, who, being sworn, deposed that he was at the port of Honolulu when the ship Dawn arrived there, in the month of December, 1828, and that he was called on to survey said ship, jointly with other persons, and that he found the lowest streak of copper, above the garboard streak of the ship, from four to five inches above, and nailed as a finish; that there were no remnants of copper or nails below, and none on the keel; that there were three surveys, and that he was one of the surveyors on each survey; that the vessel leaked at the rate of 350 strokes in the hour, as she lay in port; that a coppered ship is understood to be coppered on her keel as well as above it; that the stern post of the Dawn was worm-eaten all the way up; that here and there a sheet of copper was off at the stern, and more sheets off, in proportion, forward on the ship; that there was neither copper nor leather on the garboard streak or keel, but these were entirely exposed; that when the copper is carried off, the nails will sometimes go with the copper, and sometimes remain; that when four or five sheets go together, the nails may go, and, when one only goes, the nails, may remain; the main keel of the ship was much perforated by worms. The said witness also testified that, where the copper had come off on other parts of the ship, there were marks and heads of nails to show where it had been; and that the lower sheet, coming partly on to the garboard streak, was smooth and in good order, and the nails were all driven home; and that no copper shreads were found under the nail heads, as if other sheets of copper had been torn or worn off.

Evidence of Lewis Henchman for defendants.

The defendants, further to sustain this issue, called Lewis Henchman as a witness, who, being sworn, deposed that he was at Honolulu when the Dawn arrived there in December aforesaid, and that he examined her bottom; that the keel of the ship was eaten by worms throughout the length thereof; that very little of the copper of the ship was off; that the lower edge of the copper did not come down to the keel, and that this lower edge was nailed even and smooth, and was a single edge; and that there was no appearance of nails or copper below this edge, and that he saw both sides of the keel; that Captain Gardner said he saw all coppered but the keel, and that he was gone about twenty minutes, and when he returned the ship was righted; that the copper was on within four inches of the keel; that the face of the keel was fair, but the worm holes within so close that a pin could hardly be inserted between them; that he had never seen a vessel coppered over leather, but

should suppose that the leather could not be carried off without taking copper and nails also.

Evidence of Hunnewell for defendants.

The defendants, further to sustain the issue on their part, called Hunnewell as a witness, who, being sworn, deposed, that he was at Honololu when the ship Dawn was at that place, and that he conversed with Captain Gardner there, who always spoke of the Dawn as a first rate ship; that he spoke of her keel on two occasions, and said at one time that his impression was, that it had not been coppered, but had been told it was; that, in the opinion of the witness, the worms are equally destructive at all seasons.

Evidence of Atkins Adams for defendants.

The defendants, further to sustain the issue on their part, called as a witness Atkins Adams, who, being sworn, deposed that he had been a shipmaster twenty years, and for the last six years on shore, engaged in the whaling business; that his experience in this business was at New Bedford; that the usage in that port is to copper the main keel and the false keel of whaling ships, and in merchants' ships on the side of the keel; that when copper is worn off, there are always nails and fragments of copper remaining, even when the wood was worm-eaten; that it is the usage at New Bedford to copper the shoe or false keel of whaling ships; is not informed of the usage at New York, or elsewhere; that leather sheathing is not approved of; that a seaworthy ship for whaling must be coppered on the keel, and on the false keel or shoe; that leather is not perforated by worms, but is liable to get wet, bulge and break; is also liable to get foul, and is worse, in this respect, than wood; in coppering ships the sheets lap over about one quarter of an inch, and one range of nails fastens both sheets; that the keel of a whaling ship is about eighteen inches deep, and twelve to fourteen inches broad; said witness also testified that the words coppered ship, as applied to a whaleman, meant one whose bottom and keel are all coppered, under the keel inclusive; that a ship coppered to the keel would be a partly coppered ship; that oil on deck is not considered cargo.

Evidence of C. W. Cartwright for defendants.

The defendants, further to sustain the said issue on their part, called Charles W. Cartwright, who, being duly sworn, deposed that he had been engaged in the whaling business, during thirty years, at the island of Nantucket, and that, at the time of deposing, was the president of an insurance company in the city of Boston; that the words "coppered ship," mean a ship whose keel as well as bottom is coppered; that there is a distinction between coppered ships employed on different voyages; that in northern voyages it is not usual to have the bottom of the keel coppered; that it is the usage to have the bottom of the keel coppered of ships sent to China and Batavia; that he never knew a ship so employed, that was not coppered at the bottom of her keel; a ship not coppered is unseaworthy, because of liability to worms; but any other substance which would protect from worms would be equivalent; for any other purpose than going into the Pacific Ocean, a ship coppered half way down her keel would be deemed a coppered ship; that, in going to the Pacific, the keel must be coppered; that, in the year 1827, premiums of insurance were higher than in 1824; in 1824, premiums to the Pacific were six and one half per cent., and in the year 1827, for the like risk, eight per cent.; that he was not acquainted with the use of leather for sheathing; that he has seen twenty ships leathered above high water mark; that the same leather is not used for a second voyage: worms do not perforate leather.

Evidence of Daniel Ballard, for defendants.

The defendants, further to sustain the evidence on their part, called Daniel Ballard as a witness, who, being sworn, deposed that he was a shipwright, and had been engaged in that business forty-six years; that it is usual to copper whalemen both on the bottom of keel and false keel; that if coppered on plank and the copper goes, there will be remnants of nails and copper; if coppered on sheathing, and the sheathing goes, the copper and nails go with it, but there will remain nail holes on the plank; that copper sheets always lap over, and one range of nails fastens both edges of the copper; that the keel must be coppered because of the worms, if something else could be found to prevent worms entering that could make ships seaworthy in this respect; paper and felt check the worms—is not acquainted with the use of leather for that purpose; that when there is copper put on over sheathing, and the sheathing and copper go, there are sometimes rags of copper left where the nails remain; that some part of the lap of the copper would remain as long as the other copper over which it was fastened remained; that the edge of the remaining copper would be rough and broken if that below be broken and torn off; that he never coppered a ship for whaling in the Pacific ocean.

Evidence of Joseph Hart for defendants.

The defendants, further to sustain the issue on their part, called Joseph Hart as a witness, who, being sworn, deposed that he had been engaged ten years as a shipmaster, and about the same number of years in fitting out vessels; that he is not acquainted with the use of leather as a sheathing; that, if it were used, and copper over that, the force of water might take the leather off, that is, if the leather goes, the copper must go; thinks that leather used as sheathing might bulge out; that, in coppering, the sheets always lap over, and one row of nails fastens both edges.

Evidence of Nickerson for defendants.

The defendants, further to sustain the issue on their part, called Nickerson as a witness, who, being sworn, deposed that he had been at St. Salvador, in South America; that vessels could be hove down there, and cheaper than in Boston; that he does not recollect that there was any insurrection while the ship Dawn was there, which would have prevented her being hove down, nor any twenty-five days together, when a vessel could not have been hove down at that place.

The defendants here rested their case.

Evidence of Stephen G. Hyler for plaintiff.

And thereupon, the plaintiff, to rebut the evidence so introduced on the part of the defendants, and further to maintain the issue on plaintiff's part, called Stephen G. Hyler as a witness, who, being sworn, deposed, that he was a shipwright, and was informed in the business of repairing vessels. That the usual practice in coppering vessels was to copper down to, and upon the keel of the vessel, so as to get a good nailing on the keel. That, if the copper about the keel should get loose, it would by the action of the water give way, and come off in streaks as the water operated; and that the copper would break at the nailing on the streak next above by the play and vibration of the loose copper. That, if a vessel were coppered over leather, and the leather put on over sheathing, if the leather came off, it must take the copper with it and the nails also; but the copper would not come off so easily if nailed on to the bottom. That the witness had coppered vessels for merchants, and thinks he never knew the shoe, (or false keel) coppered. Thinks that coppering shoe makes it more dangerous to the vessel, as being likely to dis-

place the copper above; that if the copper were carried off by force of the water, the like force might raise the copper between the remaining streak next above. It is usual to double the number of nails where the copper terminates. That if copper gets loose about the keel, thinks the action of the water would work it off. That a vessel called The Andes, was repaired by him: she had been sheathed with leather, that sort of sheathing not approved, and it was taken off: this was about six years ago. Whether leather hardens under water, knows not. That he thinks the fragments remaining of broken copper, would wear off, and disappear.

Evidence of Lot Wheelwright for plaintiff.

And the plaintiff further to maintain the issue aforesaid, called as a witness Lot Wheelwright, who, being sworn, deposed: That he had been engaged thirty years in ship building and repairing, and, in that time, had built twenty-eight vessels for his own use. That it was his practice to copper down to the false keel, and to put tarred paper between it and the main keel, but not to copper false keels; that he considered a ship so prepared, a coppered ship; that he had sold five ships built by him, and so coppered, for whale ships, and never heard any complaint, that they were not coppered ships. That tarred or sanded paper, is as good between main and false keel as copper; has built ships so for twenty years, and such a ship would be fit to go to any part of the world. That he built two ships for one merchant to send into the Pacific Ocean, and that neither of these vessels were coppered on the false keel; is not acquainted with whale ships as fitted in these days; that he had repaired a thousand vessels, and never coppered the false keel.

Evidence of Allen for defendant.

And thereupon, the defendants, further to maintain and prove the issue on their part, called Allen as a witness, who, being sworn, deposed, that he had the charge of eight whale ships during the last four years; that it was the universal practice to cover all over the bottom with copper or lead, and should not send a vessel to sea unless so covered with copper or lead; but any other material would be as good if it would keep out the worms. If the garboard streak and keel were not coppered, should not deem her a coppered vessel. That as to leather sheathing, he knew one vessel, the Commodore Decatur, that was covered with leather above light water mark; that the vessel had been absent on a voyage of nineteen months. When she came home, the leather was perfectly sound, but it was taken off; that kind of sheathing having gone out of use.

Plaintiff's evidence, viz. Former application to insure.

The plaintiff, further to maintain the issue on his part, gave in evidence a former application to insure the same Ship Dawn, on a former voyage, in the words and figures following, viz.

NEW YORK, *8th Month 20th*, 1824.

Josiah Bradlee, & Co.

ESTEEMED FRIEND: My ship, the Dawn, of New York, John H. Butler, master, sailed yesterday morning on a whaling voyage to the Pacific Ocean and elsewhere. I wish you to have twenty-five thousand dollars insured, provided you can get it effected at seven per cent. or under. This ship is about three hundred and twenty-seven tons, built in this city of excellent materials; is between seven and eight years old, copper fastened, newly sheathed with wood, which was put on with composition nails, and then sheathed over the wooden sheathing with soal leather, which was also

put on with composition nails. Ship valued at fifteen thousand dollars, and the outfit at ten thousand dollars, each subject to its own average; the latter to be transferred to the oil, as fast as it may be obtained, (say my proportion, which will be about two-thirds of all that may be obtained,) the same to be valued at forty cents per gallon; if part should be sent home by any other vessel or vessels, that part not to be deducted from the amount insured on the outfit. Some times our ships take oil between here and the Cape de Verd Islands, and wish to send it home; therefore, I wish you to stipulate in the policy for liberty to do it. Hoping to hear from you soon on the subject of this letter, I remain, your assured and very respectful friend,

(Signed,) THOMAS HAZARD, Jr.

P. S. It must be stipulated in the policy that the ship have liberty to stop for refreshments as is usual and customary on such voyages.

And that the defendants, on that application, did insure the same ship Dawn, as appears by the policy of insurance thereon written by defendants in the words and figures following:

No. 10,151. *By the New England Marine Insurance Company.*

Former policy. This policy of insurance witnesseth, that the President and Directors of the New England Marine Insurance Company do, by these presents, cause Josiah Bradlee and Co., for Thomas Hazard, junior, of New York, to be assured, lost or not lost, twenty-five thousand dollars on the ship Dawn and outfits, from New York to the Pacific Ocean, and elsewhere, on a whaling voyage, during her stay and fishing, and until her return to New York, or port of discharge in the United States, with liberty to touch at any places for refreshments, and also with liberty to ship home oil in any vessel, without prejudice to this policy; oil, when on board, to be in lieu of outfits, and valued at 40 cents a gallon; whereof is master for this present voyage, John H. Butler, or whosoever else shall be master in the said vessel, or by whatsoever other name or names the said vessel, or master thereof, is, or shall be named or called: beginning the adventure upon the said vessel and outfits as aforesaid, and to continue during the voyage aforesaid on the vessel, until she shall be arrived and moored at anchor twenty-four hours in safety, and on the property until landed. And it shall be lawful for the said vessel, in her voyage, to proceed and sail to, and stay at, any ports or place, if thereunto obliged by stress of weather, or other unavoidable accidents, without prejudice to this assurance. Touching the adventures and perils which the said Insurance Company are contented to bear, and take upon them in this voyage, they are, of the seas, fire, enemies, pirates, assailing thieves, restraints, and detriments of all kings, princes, or people, of what nation or quality soever, barratry of the master, (unless the assured be owner of the vessel,) and of mariners, and all other losses and misfortunes which have or shall come to the damage of the said vessel and outfits, or any part thereof, to which assurers are liable by the rules and customs of assurance in Boston: provided, that the assurers shall not be liable for any partial loss on sugar, flaxseed, bread, tobacco, and rice, unless the loss amount to seven per cent. on the whole aggregate value of such articles, nor for any partial loss on salt, grain, hemp, flax, fish, fruit, hides, skins

Form of policy adopted by all the insurance companies in Boston, Sept 1, 1823.

Sailed 19, August.

Sum insured 285,000.

or other goods that are esteemed perishable in their own nature, unless it amount to seven per cent. on the whole aggregate value of such articles, and happen by stranding; nor for any partial loss on other goods, or on the vessel or freight, unless it amount to five per cent. exclusive, in each case, of all charges and expenses incurred for the purpose of ascertaining and proving the loss; but the owners of such goods shall recover on a general average. And in case of any loss or misfortune, it shall be lawful for the assured, his factors, servants, and assigns, to sue, labor and travel for, in and about the defence, safeguard, and recovery of the said vessel and outfits, or any part thereof, without prejudice to this assurance, to the charges whereof the said Insurance Company will contribute, in proportion as the sum assured is to the whole sum at risk. And so the president and directors aforesaid are contented, and do hereby bind the capital stock, and other common property of the said Insurance Company, to the assured, his executors, administrators, and assigns, for the true performance of the premises, confessing themselves paid the consideration due unto them for this assurance by the assured, at and after the rate of six per cent.

Vessel valued at, not including prem, $15,000, and outfits, $10,000.

And it is hereby agreed that, if the assured shall have made any other assurance upon the vessel or outfits aforesaid, prior in date to this policy, then the said Insurance Company shall be answerable only for so much as the amount of such prior assurance may be deficient towards fully conveying the property at risk, whether for the whole voyage, or from one port of lading or discharge to another; and the said Insurance Company shall return the premium, or a rateable part thereof, upon so much of the sum by them assured, or for such part of the voyage as they shall be exonerated from by such prior insurance, excepting half per cent., which shall be retained in all cases of return premium: provided, that no return premium shall be made for any passage whereon the risk has once commenced. And in case of any assurance upon the said vessel or outfits, whether it be for the whole or part of the voyage, subsequent in date to this policy, the said Insurance Company shall, nevertheless, be answerable to the full extent of the sum by them herein assured, without right to claim contribution from such subsequent assurers; and shall accordingly be entitled to retain the premium by them received in the same manner as if no such subsequent assurance had been made. And in case of loss, the assured is to abate one per centum; and such loss shall be paid in sixty days after proof and adjustment thereof, the amount of the premium note, if unpaid, and all sums due to the company from the assured, when such loss becomes due, being first deducted, and all sums coming due being first paid or secured to the satisfaction of the said president and directors, they discounting interest for anticipating payment. It is also agreed that, in case of capture or detention, the assured shall not have the right to abandon therefor, until proof is exhibited of condemnation, or of the continuance of the detention, (by capture or other arrest,) for at least ninety days; and that the assured shall not abandon in consequence of the port of destination being blockaded, but the vessel shall, in such case, have liberty to proceed to another port not blockaded, and there end the voyage, or wait a reasonable time for the blockade of the original port of destination to be raised; and that the acts of the assured or assurers in recovering, saving, and preserving the property insured in case of disasters, shall not be considered a waiver or acceptance of an abandonment.

Premium.	
$1,500	
Policy	1
$1,501	

It is also agreed that the assurers shall not be answerable for any charge, damage, or loss, which may arise in consequence of detention or seizure, for, or on account of, illicit, or prohibited trade, or trade in articles contraband of war; but the judgment of a foreign consular or colonial court shall not be conclusive upon the parties as to the fact of there having been articles contraband of war on board, or as to the fact of an attempt to trade in violation of the laws of nations. It is also agreed, that this policy shall be void in case of its being assigned, transferred, or pledged, without the previous consent, in writing, of the assurers. It is also agreed that the assured shall not have the right to abandon the vessel for the amount of damage merely, unless the amount which the assurers would be liable to pay under an adjustment, as of a partial loss, shall exceed half the amount insured; and in case of a total loss of the vessel, with salvage, the amount allowed out of the salvage to the officers and crew for wages earned, or services rendered, previously to the loss, shall be considered as so much of the salvage applied to the use of the ship owners, even although the same should be allowed or paid under the name of salvage, and not as wages, and shall accordingly be deducted in adjusting the loss. It is further agreed, that if any dispute shall arise relating to a loss on this policy, it shall be submitted to the judgment and determination of arbitrators mutually chosen, whose award, in writing, shall be conclusive and binding on all parties. In witness whereof, the president of the said New England Marine Insurance Company hath hereunto subscribed his name, and caused the same to be countersigned by their secretary, at their office in Boston, this twenty-third day of August, one thousand eight hundred and twenty-four. Note 18 mos.

JOHN WATERS, *Secretary.* JAMES HALL, *President.*

And thereupon, the parties rested.

The judge's charge to the jury.

His honor the judge charged the jury as follows: First. That, as to the objection taken to the plaintiff's right of recovery, upon the ground that there was no sufficient abandonment made out, whatever might be his opinion of the validity of the objection, he should, for the purposes of the trial, rule, and he accordingly did rule that, under all the circumstances of the case, the abandonment was sufficient in point of law. Second. That, the representation and facts stated in that letter,* so far as they were material to the risk, must be substantially true; that if the ship was not coppered, as stated in that letter, and the ship did not, in that respect, correspond with the representation, and the difference between the facts and the representation was material to the risk, then the plaintiff was not entitled to recover upon the policy: and he left the facts as to representation, and the materiality, to the jury. That, in ascertaining whether the vessel was coppered, it was for the jury to determine what constitutes a coppered ship; and if the jury should find, from the testimony, that, in order to constitute what is called a coppered ship, the bottom of the keel, and the sides of the keel, as well as the sides of the vessel, must be coppered, and they should further find that this vessel was not so coppered, and the deficiency was material to the risk, then there was not a compliance with the terms of the

* Supposed to refer to a letter of the assured to his agent in Boston, and left with defendants at the time application was made for insurance.—*J. W. D., Clerk.*

letter left with the underwriters, and the underwriters were not liable upon the policy. Or, if they should find that a ship coppered on her sides, and also on the sides of the keel, and not on the bottom of the keel, or false keel, would meet the representation of a coppered ship on other voyages, but that in whaling voyages, in the Pacific Ocean, the usual and customary mode is to copper the bottom of the keel or false keel, and it is understood by underwriters, when application is made for insurance on such voyages, that vessels are so coppered, unless the contrary is stated, then, inasmuch as the letter applying for insurance is an application for insurance of a vessel on a whaling voyage in the Pacific Ocean, the underwriters had a right to consider the representation in the letter as describing the vessel as coppered in the manner in which vessels are usually coppered for such voyages, and, if the ship was not so coppered, and that deficiency was material to the risk, the terms of the letter were not complied with, and the defendants were not bound by the policy.

His honor further charged, that, in ascertaining what is to be understood as a coppered ship in applications for insurance on a voyage of this nature, the terms of the application are to be understood according to the ordinary sense and usage of those terms in the place where the insurance is asked for and made, unless the underwriter knows that a different sense and usage prevail in the place in which the ship is then lying, and in which the owner resides, and from which he writes asking for the insurance; or unless the underwriter has some other knowledge that the owner uses the words in a diffierent sense and usage from that which prevail in the place where the insurance is asked for, and made.

The judge further charged the jury, that, although the terms of the letter applying for insurance were not to be considered a technical warranty, yet, if the coppering of the ship, as stated in the letter on which the insurance was made, was substantially untrue and incorrect in a point material to the risk, such a misrepresentation would discharge the underwriters, although the ship was partially coppered, and although the loss did not arise from any deficiency in the coppering. Third. His honor the judge further charged the jury, that, if there was no misrepresentation in regard to the ship, and she substantially corresponded with the representation, still, if the injury which occurred at the Cape de Verds were reparable, and could have been repaired there, or at St. Salvador, or at any other port at which the vessel stopped in the course of the voyage, the master was bound to have caused such repairs to be made, if they were material to prevent any loss. And if he omitted to make such repairs because he did not deem them necessary and if, by such neglect alone, the subsequent loss of the ship by worms was occasioned, the underwriters are not liable for any such loss, so occasioned.

Fourth. His honor further charged, that, if the jury should find that, in the Pacific Ocean, worms ordinarily assail and enter the bottom of vessels, then the loss of a vessel destroyed by worms would not be a loss within the policy.

Fifth. He further charged that, as the decisions of the courts in Massachusetts had established that damage arising from injury by worms was not a loss within the policy, the underwriters in Boston must be deemed as contracting in reference to those decisions, and not liable for losses from that cause. His honor further charged, that if, in consequence of the injury sustained at Port au Praya, in the Cape De Verds, the false keel was torn

off, whereby the vessel became exposed to the action of the worms, and that they thereby obtained entrance and destroyed the vessel, that the loss would not come within the policy, it being a consequential injury, against which underwriters are not considered as taking the risk. The counsel for the plaintiff called upon the court to charge upon the two following points: that, if the jury believed that the underwriters would not have charged a higher rate of premium if the vessel had been correctly represented than they did charge, and that the insured had not intentionally misrepresented the facts, then the representation contained in the letter is not material, and does not defeat the policy. Second, If they believed that the object of coppering the bottom of the keel is to protect it against worms and, if they also believed the leather an equal protection, and was put on, in that case the letter would not be considered a material misrepresentation.

1. The court refused to direct the jury in the terms stated; but, upon this point, did direct the jury, that, if the fact was not material to the risk, and would not have varied the conduct of the underwriters either as to the premium of insurance, or as to the underwriting at all, if the fact had been correctly represented, and the insured had not intentionally misrepresented the facts, then the misrepresentation will not prevent the insured from a recovery in this case, or defeat the policy.

2. The court refused to give the directions in the terms stated. But, upon this point, directed the jury, that, if the object of coppering the bottom of the keel was to protect it against worms, and if they believed that leather is an equal protection, still, if the fact was that the letter of instructions did contain a representation which was, and must have been understood, as representing that the keel was coppered, and if that fact was material to the risk, and might have induced the underwriters to ask a higher premium, or not to have underwritten at all, then the misrepresentation of its being copper, when it was leather, would avoid the policy. But if it was not a fact material to the risk, and would not have changed the conduct of the underwriters either as to underwriting at all, or in asking a higher premium, then the misrepresentation would not avoid the policy. To which charge of the judge, in the several points above stated, the counsel for the said plaintiff did then and there except: whereupon, the jury having retired, afterwards returned a verdict for the defendants. And inasmuch as the matters aforesaid do not appear by the record of the verdict aforesaid, the counsel on the part of the said plaintiff prayed that the said court would set their seal to this bill of exceptions, containing the several matters proved and given in evidence, and the charge of the judge thereupon, and the exceptions thereto.

The aforegoing bill of exceptions being found to be true, I do hereby, in testimony thereof, allow the same, and certify the same under my hand and seal. JOSEPH STORY. [SEAL.]

UNITED STATES OF AMERICA, *Massachusetts District, ss.*

I, John Watson Davis, Clerk of the District and Circuit Courts of the United States within and for the Massachusetts District, do hereby certify to all whom it may concern, that the aforewritten transcript, consisting of two hundred and seventy-seven pages, is a just and true copy from the original acts and proceedings had in said Circuit Court in a certain cause